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Mr. P. V. KRISHNAYYA CHOUDARI:—"Sir, I move that the amendments recommended by the Select Committee be passed; I shall read these amendments:—

'For clauses (4) and (5) of Standing Order No. 5 (b) substitute the following:—

"(4) *The relative precedence—*

(a) *of Bills falling under sub-clause (iv) of clause (2),*

(b) *of Bills falling under sub-clause (v) of clause (2) and*

(c) *of resolutions,*

shall be determined by ballot.

(5) *A separate ballot shall be held—*

(a) *for motions relating to Bills falling under sub-clause (iv) of clause (2);*

(b) *for motions relating to Bills falling under sub-clause (v) of clause (2); and*

(c) *for resolutions " " "*

The motion was duly seconded.

The amendments were put and carried.

III.—THE MADRAS DEBT CONCILIATION BILL (BILL No. 9 OF 1934).

New clause 12-B.

* The Hon. the PRESIDENT:—"The House will now proceed to consider the Madras Debt Conciliation Bill (Bill No. 9 of 1934). When we last adjourned, hon. Members might remember that we had been discussing amendment No. 38^a, viz., new clause 12-B moved by Mr. Krishnayya Choudari. Some hon. Members had already spoken on the subject and the discussion on the amendment will now continue."

Mr. P. V. KRISHNAYYA CHOUDARI:—"We have already discussed it and the Hon. the Law Member also gave his acceptance, I think."

The Hon. Sir K. V. REDDI NAYUDU:—"On a point of personal explanation, Sir, I never gave any acceptance."

Mr. P. V. KRISHNAYYA CHOUDARI:—"I think in a way it was accepted. As the House has already discussed it, I think, I need not say much about it. I personally feel that the interest must not exceed the principal in any circumstance. So I move my amendment."

New clause 12-B.

a Mr. P. V. KRISHNAYYA CHOUDARI:—

38 *Insert the following as new clause 12-B:—*

"12-B. (1) In any scheme of debt conciliation under this Act, no creditor shall be allowed a greater amount in satisfaction of both principal and interest than twice the amount of the principal.

(2) In any suit brought after the commencement of this Act against the debtor for the recovery of a loan borrowed before the commencement of the Act, no court shall pass a decree in satisfaction of both principal and interest for a larger sum than twice the amount of the principal."

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* The Hon. Sir K. V. REDDI NAYUDU:—"The hon. Member who moved this amendment was not well informed when he stated that I accepted the amendment. In the proceedings I do not find that I spoke a single word that day. The hon. Member's suggestion in the amendment is that in the settlement of debts the amount to be awarded should not exceed the principal and interest by more than twice the amount of the principal. Sir, that is not a fair settlement. Evidently the hon. Member has drawn this amendment from the Punjab Act. In the Punjab Act it will be noticed that these two clauses are separated, one clause referring to suits filed before the Act and the second clause relating to suits filed after the commencement of the Act. Suppose, for instance, a loan of hundred rupees is given before this Act came into force and it has by lapse of time come up to Rupees 1,000. If the amendment is carried some difficult situations will arise. Suppose Rs. 100 was lent 12 years ago and the bond or pro-note is kept alive by repeated acknowledgments and the amount due comes up to Rs. 1,000. Then under the amendment, this settlement must be limited to Rs. 200 because the principal was Rs. 100 and though it has come to Rs. 1,000 when the Act came into force, not more than Rs. 200 can be awarded. That is not what is enacted in the Punjab Act. That is not their idea. The Punjab Act is very clear on that point. Section 30 of that Act runs thus:

'In any suit brought after the commencement of this Act against a debtor as defined in section 7 for the recovery of a loan borrowed before the commencement of this Act, no court shall grant a decree in satisfaction both of principal and interest for a larger sum than twice the amount which the court finds to have been due at the commencement of this Act.'

"So that it is different altogether from the principal. In the second case:

'In any suit brought against a debtor as defined in section 7 for the recovery of a loan borrowed after the commencement of this Act, no court shall pass a decree for a larger sum than twice the amount of the sum taken as principal.'

"As I have stated, in cases where the amount has accumulated to a certain amount before the Act comes into force, then the provision made in the Punjab Act is in regard to the amount due at the time of the passing of the Act. On the other hand, if the suit is brought after the Act has been passed, then certainly the question of principal may have to be considered. The hon. Member does not make this distinction. I cannot therefore accept the amendment."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"In the course of the discussion in and outside the House the view expressed seemed to be that ordinarily the rule may be accepted and may be incorporated if possible in the Bill. It is said that Government itself issued certain rules under the Agricultural Loans Act, under which the principal that is mentioned in the document which is going to be discharged will be taken as the basis and under no settlement can more than twice the amount should be given to the creditor. That, I believe, is the effect of the rules issued by Government. I understood that was going to be enacted by the Government as a rule during the discussion

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in the informal conference the other day. If we take the principal of the document on which the claim is based and if it is said that in any settlement that is to be come to not more than twice the amount will be given I think, Sir, that will satisfy the requirements and the difficulty mentioned by the Hon. Member will vanish. If the last document said that Rs. 500 was given all that the rule will say will be not more than thousand rupees shall be given. The Punjab Act is different. It takes the amount due on the day on which the Act comes into force. So I would suggest this wording, Sir, viz., 'twice the amount of the principal mentioned in the document on which the claim is based.' (The Hon. Sir K. V. Reddi Nayudu: 'Supposing the claim is based on a decree?') So far as decrees are concerned there is no trouble because the amount of the decree shall be taken as the amount due under a provision we have already passed. It is only where the court has not given a decree the question will arise. So to avoid the difficulty mentioned by the Law Member, I move to add, 'the amount of the principal mentioned in the document on which the claim is based'."

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noon.

* The Hon. Sir K. V. REDDI NAYUDU:—"That does not solve the difficulty contemplated by the hon. Member, because the document may be kept up by a series of small acknowledgments on the back of it. The acknowledgments will also save the period of limitation, viz., twelve years and will serve to prolong the life of the document for a much longer period. Then, of course, the principal of the first debt might not be one-tenth of what was due on the date the last endorsement had been made. Therefore, that will not solve the hon. Member's difficulty. I will have no objection if the hon. Member fixes a certain date, say the date on which this Bill has been introduced, or anything he likes. But to go back to the first date of the document will mean nothing."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"Then, I will definitely move an amendment—

'For the words "of the principal" at the end of paragraph (1), substitute the words "due on the 1st of June 1933" '."

* Mr. T. C. SRINIVASA AYYANGAR:—"May I suggest that this amendment may be put down and circulated? I know that at least in one Indian State of this country, the ancient laws of Manu in this respect are the law of the country; but in 90 cases out of a hundred the rule cannot be given effect to. So, let us know where we are. Let the amendment, whatever it be, be put down on paper and circulated to us."

* The Hon. the PRESIDENT:—"I would suggest that the amendment might be put in writing and circulated. Meanwhile we shall go on with the other clauses."

This was agreed to, and consideration of new clause 12-B was postponed.

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Clause 13.

* The Hon. Sir K. V. REDDI NAYUDU:—" Mr. President, Sir, I beg to move that clause 13 be deleted.

' Clause 13 as amended by the Select Committee runs thus:—

" 13. If a debtor defaults in paying any amount due in accordance with the terms of an agreement registered under sub-section (2) of section 12, any amount payable under such agreement which remains unpaid shall be recoverable as if a decree of a civil court had then been passed for its payment."

I submit that this is a redundant clause as a reference to clause 12 (2) which the Council agreed upon will show. It says:

' An agreement thus made shall, within thirty days from the date of its making, be registered under the Indian Registration Act, 1908, by the chairman of the board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil court.'

Thus the intention of clause 13 is carried out by clause 12 (2). It is therefore redundant and unnecessary, and I move that it be deleted."

The Hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—" I second it."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—" I think that, if clause 13 is going to be deleted, we will probably have to add at the end of sub-clause (2) of clause 12, the words 'and be executable as such.' Otherwise, there might arise a doubt. So, why not make it quite clear? Now that clause 12 has already been passed, unless we pass the other amendment also to it, we cannot delete clause 13. That is why I am moving to add at the end of clause 12 (2) the words 'and be executable as such'."

Mr. K. R. VENKATARAMA AYYAR:—" You may say 'enforceable'."

* The Hon. the PRESIDENT:—" If the House is agreeable to the deletion of clause 13 and to the amendment of clause 12 (2), then we will have to reopen clause 12 and make the amendment, and then go to clause 13."

Clause 12.

On the House signifying its assent, clause 12 was again taken up for consideration.

Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—" I move to add at the end of sub-clause (2) of clause 12 the words 'and be executable as such'."

The motion was duly seconded.

Mr. G. RAMESWARA RAO:—" In this connexion, I would propose that the words of my amendment No. 41 in the printed list may also be added, viz., the words 'in one lump or instalments as provided in the agreement'."

The Hon. Sir K. V. REDDI NAYUDU:—" That is rather a controversial point."

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* The Hon. the PRESIDENT:—"The hon. Member's amendment depends upon the retention of clause 13."

Mr. G. RAMESWARA RAO:—"If clause 13 is going to be deleted, those words might be added to clause 12 (2), and so I would request with your permission to move my amendment also."

* The Hon. the PRESIDENT:—"It is not a question of the Chair giving permission, but the House has to give the permission. I should like to know, besides the amendment to clause 12 (2) and the amendment for the omission of clause 13, if the House is going to allow the hon. Member to move another amendment."

Mr. G. RAMESWARA RAO:—"I would appeal to the Hon. the Law Member to consider my suggestion as regards the mode of recovery of the amount, whether the recovery is to be in one lump sum or in instalments."

The Hon. Sir K. V. REDDI NAYUDU:—"If the Board decides to prescribe the method, the question will not arise."

Mr. G. RAMESWARA RAO:—"That may mean that some rule may come in the way, and so you should state clearly whether the recovery is to be in one lump sum or in instalments."

The Hon. Sir K. V. REDDI NAYUDU:—"That is already carried out there."

* The Hon. the PRESIDENT:—"The question is—

'Add at the end of sub-clause (2) of clause 12 the words "and be executable as such".'"

The amendment was put and carried.

Clause 12 as amended was put and carried.

Clause 13.

* The Hon. the PRESIDENT:—"The question is that clause 13 be deleted."

The amendment was put and carried.

* Mr. K. KOTI REDDI:—"Sir, I beg to move—

'For clause 13, substitute the following:—

"13. If no amicable settlement is arrived at under section 12, the following procedure shall be adopted for settling the debts. The Board shall at first take into full account the economic value of the rupee, i.e., the proportionate fall or rise in the value of the land and its products in the locality at the time when the amount was borrowed, at the time when the debt was partly discharged, if any, and at the time when

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the settlement is to be made. The Board shall then deduct from the amount so arrived at any sum it considers necessary on account of the following considerations:—

- (1) *The amount of consideration actually received;*
- (2) *the reasonableness of the rates of interest;*
- (3) *onerous conditions, if any, complied with in the grant of the loan;*
- (4) *whether at any time, the creditor or the debtor was offered settlement of the debt in full or part, and if so, what the terms were; and*
- (5) *other particulars which the Board thinks it desirable to take into account.*

From the amount so arrived at, the sum which in the opinion of the Board is necessary for the bare maintenance of the debtor which shall not exceed the estimated expenditure necessary for realizing the debts through the ordinary process of law shall be deducted.

The amount so arrived at shall be declared to be the amount due by the debtor to the creditor or creditors."

"Sir, I do not think it is necessary for me to make an elaborate speech on this amendment. The House has come to the conclusion that under certain circumstances the creditor and the debtor should be brought together and made to agree to some settlement of the debt. My amendment now is to the effect that where such a settlement cannot be effected on account of the disagreement of one party or another, the Government ought not to be satisfied with the mere hope of bringing about an agreement later on. It is clear from the report of the Special Officer on Rural Indebtedness that the condition of the ryot is very very deplorable and that something should be done immediately in order that the ryot may be relieved of this burden of indebtedness. On page 49 of his report, the Special Officer says: 'No doubt, the present position of the agriculturist debtor is alarming and his great burden of debt has to be speedily lifted from his shoulders.' I would rather lay emphasis on the word 'speedily.' I believe the Government probably hope along with the Special Officer that it is not very difficult to bring about a voluntary settlement. My conviction, Sir—I am speaking from some knowledge of the debtors as well as creditors—is that these voluntary settlements are not ordinarily effected. Where conditions are possible even to-day, such voluntary action is being effected, and panchayatdars do sometimes help to bring about a settlement. Where the property is not large or where the debtor is heavily indebted and the property is not sufficient to meet the entire debt, the creditor is obliged to come to some sort of agreement. Such things are taking place even without the help of the legislature. But the serious nature of the question that we have to meet with is this, that in the majority of cases such voluntary action is almost impossible. It is due to many circumstances. There are some ryots with very large property but who are not so heavily indebted. In such a case the creditor

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12-15 actually compels the debtor to sell away practically the whole of his
p.m. property for meeting after all only a small amount of debt, which under better circumstances, could be discharged without the whole property being brought to auction. The creditor takes advantage of the present economic depression and of the heavy fall in prices of land. Should we not as the representatives of the people find a remedy for such state of things and see that the ryot is not put to the necessity of selling away all the property to the creditors most of whom are sowcars or capitalists, for in their case purchasing the property is not worth the game? And what is happening is most of the land is going out of cultivation or proper cultivation. Besides the creditor is not in a position to get a proper price for the lands that thus come into his possession. The result is the ryot who is interested in the cultivation is put off out of the land and the sowcar or capitalist is not in a position to make the best use of the land even if he cultivates the lands he won't be able to get even half of what the ryot gets. There is a slight mistake in amendment (No. 42). It must be 'for clause 13' instead of 'for clause 14.' "

* The Hon. the PRESIDENT:—"There is another amendment which he has given notice of for clause ^a 14."

Mr. K. KOTI REDDI:—"That also goes along with the other."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"May I point out, Sir, that amendments Nos. 29, 40 and 42 all go together. My hon. Friend, Mr. Koti Reddi, has given notice of amendments which altogether introduce a new arrangement in the Bill. The Bill as originally drafted was for voluntary settlement. My friend's idea was that powers of compulsion should be given to the board. The matter was discussed at length. He gave amendments for clauses 12, 13, 14, 15 and 16; he wanted a new set of clauses to be introduced altogether. As I said the other day, even though I am in sympathy with many of his

Clause 14.

^a Mr. K. KOTI REDDI:—

For clause 14, substitute the following:—

"14. Where the debtor expresses his willingness to pay the amount so declared under section 13, the debtor shall be allowed three months for payment. Where he fails to pay the amount within the time so allowed or where he expresses at the outset his inability to pay, the Board shall, after setting apart the portion of the property for the maintenance of the debtor as aforesaid,—

- (i) either sell the remaining property in the manner prescribed and distribute the proceeds amongst the creditors; or
- (ii) allow all or such creditors as are willing to have their debts discharged in annual equated payments, with interest calculated at not more than 6 per cent per annum on the security of the property of the debtor, provided that property, in proportion to their debts, is set apart for discharging by immediate sale, the debts of those who are not willing to receive equated payments:

Provided that any arrangement under this section shall not affect the prior claims of the secured creditors without their consent except to the extent of property set apart for the maintenance of the debtor as aforesaid and to the extent of reduction, if any, of the amount calculated under section 13."

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amendments I am very sorry that the Bill as drafted and introduced in the Council has no room for them. So I would suggest that the Bill may be allowed to be passed and another Bill brought either supplemental to it or in some other form. There are five or six amendments here which all hang together. The whole thing was discussed at the last meeting and the House was of opinion that they could not be brought into the present Bill."

* Mr. T. C. SRINIVASA AYYANGAR:—"Mr. President, the first point is, if the principle that the King's coin shall not have its legal value in the payment of a debt but a different value is to be substituted for it, I believe that the amendment strikes at the very root of the currency system of the country; the next point is whether this House will be competent to deal in such a way as to affect the value of the coin and if it is competent, whether a special sanction of the Governor-General would not be necessary. I desire to invite the attention of the House to this. If no amicable settlement is arrived at under sub-section (1) of section 12, the following procedure shall be adopted for settling the debts. The Board shall at first take into full account the economic value of the rupee. But to-day the law of the land is that if a debtor pays in the King's coin the number of rupees mentioned in the contract then he shall be discharged from the obligation. Now this amendment of my Friend, Mr. Koti Reddi, will mean that the King's coin shall not have its legal value but shall have a different value which the Conciliation Board shall fix. That is the position we shall be reduced to. I may perhaps illustrate the confusion likely to result. Perhaps many of you even now would remember that for certain reasons of State the mints in India were closed towards the latter part of the last century. The result was the value of the rupee artificially rose. Indians had firms in Malay States, Singapore, etc., and in French and Dutch Indies where the currency had been the silver dollar. In those countries mints were not closed and there was free mintage of dollars and the result there was that the value of the dollar in the east was very nearly equal to the value of the metal. So, very strange results followed, from the interference with the normal operation of the currency in India. Some of the Nattukkottai Chetti friends of mine who have been trading in the East Indies, and whose firms in the Far East earned enormous profits there, sustained heavy losses really. They had to borrow at Calcutta and Rangoon and remit money to those foreign parts. When they repaid, the profits earned were eaten up by the artificial higher exchange value of the rupee. The difficulties were avoided by the State interfering at a later stage and fixing the exchange value between dollar and rupee at 175. Now all these things were necessary for the purpose of giving the proper normal momentum to trade. My friend (Mr. Koti Reddi) will upset the whole currency laws in his efforts to help the debtor. I consider that the provision contained in this amendment is open to very serious objection and I submit, Sir, your ruling in the matter is necessary."

* The Hon. the PRESIDENT:—"The hon. Member, Mr. Koti Reddi, might know that the principle has been already settled on a former

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occasion and there is no room for his amendment to be discussed at all at this stage. I therefore rule it out of order and call on Mr. C. K. Reddi to move the next amendment standing in his name."

Clause 14.

Rai Sahib C. KOLANDA REDDI:—"Sir, I beg to move—

'For the words "dismiss the application" in line 4, substitute the following:—

"after due enquiry pass an award which shall have the same effect as the agreement referred to in clause 12, sub-clause (1)." " "

* The Hon. the PRESIDENT:—"As this involves the same objection that has been raised just now, it cannot be moved."

* The Hon. Sir K. V. REDDI NAYUDU:—"I beg to move, Sir—
'that the proviso to clause 14 be omitted.'

"The proviso as it stands is only an enabling provision in the sense that the Government are not bound but that they may, if they like, facilitate payment of debts by granting loans and may realize the amount from the debtors, etc. A provision like this is undesirable in an Act for various reasons. For one thing, Government have by the amendment of the Agriculturists' Loans Act, agreed to pay the amount and if hon. Members expect anything more than that, the objection of the Government will be that it is not reasonable nor is it permissible to bind them to make any payment. Therefore, Sir, this clause is not agreeable to Government and they want it to be removed from this Bill. I may mention for the information of the House that this matter has been discussed by the Government carefully and I have instructions to move that this proviso should be omitted."

The Hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

Mr. P. V. KRISHNAYYA CHOUDARI:—"We also discussed it very carefully in the Select Committee, and we pointed out that there was some necessity to keep this clause, and as a matter of fact this new clause was added in the Select Committee for the reason that if the Government feels at any time the necessity they can advance loans. The Agricultural Loans Act provides only up to a maximum of Rs. 2,000. Besides it is not compulsory on the part of the Government that they should pay. So I don't see why Government should feel nervous about retaining this proviso. As it is not a harmful clause I appeal to the Hon. the Law Member to retain it as it is. It is there only to meet certain contingencies, but if the Government is not prepared to advance loans, there is no compulsion on them."

Mr. K. KOTI REDDI:—"I don't see why Government is fighting shy of this clause. The Government may occasionally do something. But if it is not prepared nobody can compel it. The Special Officer himself says:—

'If the agriculturist is to be saved, the bulk of his standing debt, at rates of interest ranging usually from 9 to 24 per cent and oftener rising to even 36

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per cent, must be paid off by some financing agencies (like Government or co-operative societies or land mortgage banks), who at the same time will give the debtor-agriculturists every opportunity of repaying from their income, by charging interest at as low rates as possible and by collecting in easy instalments spread over a long period of years."

"Even to-day not more than six per cent of debtors according to the statements made by the Special Officer have been helped by the co-operative societies; the land mortgage banks have done very little in that direction; unless the Government is prepared to extend a helping hand to the ryots there can be no hope for them."

Mr. P. C. MUTHU CHETTIYAR:—

"கடன்காரருக்கு போர்டார் தீர்மானத்தின்பேரில் 'அக்கிரிகல்சரல் லோன் ஆக்ரூப்படி' கொடுக்கவேண்டிய கடனுண்டு "may" என்று ஆபீஸ்கை இருக்கப் பாது. "may" என்பதற்கு பதில் "shall" என்று போடவேண்டியது அவசியம்.

"இதை அமெண்டு மெண்டாகவும் கொடுத்திருக்கிறேன். போர்டில் ஒரு விதமாக சமரச தீர்மானம் ஏற்பட்ட பிறகு அதற்கு கவர்ன்மெண்டார் தொகை கொடுக்கிறார்களென்று ஏற்படுவதானது ஆக்டின் அபிப்பிராயத்தை நிறைவேற்ற செய்ததாக ஆகும். கவர்ன்மெண்டில் கடன் வாங்கிய பிறகு வேறு கடன் உத்திர வன்னியில் வாங்கப்படாது என்று காணலாம்.

"தீர்மானத்தில் நஷ்டங்கள் இருப்பினும் அப்பொழுதே ரொக்கம் வரு வதை எதிர்பார்த்தால் நஷ்டத்தை கருதார்.

"கடன்பட்டவர்களை பிறரிடம் விட்டு வேடிக்கை பார்க்கலாகாது.

"ஹானரபிள் லாமெம்பரவர்கள் இதை மருப்பதானது இந்த ஆக்ரூக்கு பலம் கொடுக்காது. கவர்ன்மெண்டு கொடுக்கும் துறைக்கு இந்த ஆக்டிலும் சரியே இனி எந்த ஆக்ரூ வந்தாலும் சரியே அதை ஒன்றும் பாதிக்கபோவதில்லை.

"ஆகையால் ஆனரபிள் லாமெம்பரவர்கள் முடியாது என்பதை ஆகேஷ் பிக்கிறேன்."

Diwan Bahadur C. NATESA MUDALIYAR:—"Sir, for my part I would request the Hon. Member not to press this amendment. If this proviso is omitted, the whole Bill will become useless and they might as well drop the Bill. The various clauses in it are somewhat wishy-washy and the only redeeming feature is the proviso which is now proposed to be omitted. I request the Hon. Member therefore not to press for its omission."

* Sriman M. G. PATNAIK Mahasayo:—"Sir, it is very difficult to understand why the Government have decided to object to this clause. All that it says is that the Government may, if they so choose, pay that amount. It simply gives authority to the Government to do so. It does not compel them at all. That being the case, as I said, I do not understand why the Government should oppose it. Of course a future Government may think that they can find money to fulfil the requirements of this clause; there is no power to compel them to do so. Therefore why should this Government fetter the discretion of their successors? I do not think this Government thinks that it will continue for ever. Some other Government will certainly succeed them. That being the case, I do not see any reason why they should fetter the discretion of the future Government. This amendment therefore should be thrown out."

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MR. G. RAMESWARA RAO:—"Mr. President, I do not very much see any force in the contention that this proviso must be retained. If the Government were to act honestly and sincerely they do not require enabling powers of the kind proposed in the proviso. (The Hon. Sir K. V. Reddi Nayudu: 'Quite so.') because, as the Hon. the Law Member pointed out, there is a provision in the Agriculturists' Loans Act, since amended, to enable the Government to grant loans for discharging all antecedent debts. That provision is ample enough if they sincerely desire to help the ryots. It is one thing to say that they have no power and it is quite another thing to say that they are not willing to help the ryots. Here I must state that the Government are not very ready to help the ryots, inasmuch as, under the rules framed, which are very stringent and severe, it is not possible for any tenant to take advantage of any enabling provision. Whatever it may be, it is a matter for framing rules which can be amended in any desirable manner. There is ample provision to go to the rescue of the ryots whenever the Government are so inclined. So this sort of proviso is absolutely redundant inasmuch as there is provision already in other enactments. The proviso does not seem to serve any useful purpose except to throw dust in the eyes of the general public and say, as it were 'Look here, we are going to help you.' It would seem as if the Government has otherwise no power to help them. Let us be sincere to the people and let us help the Government in framing decent rules so that it may, if it wants, go to the rescue of the ryots with the powers with which it is already invested."

* MR. T. C. SRINIVASA AYYANGAR:—"I do not desire to add very much to the observations made by my hon. Friends. However, it may be permissible to point out that without some provision for financing the results of the Conciliation Boards, the Act will remain a dead letter. There must be some provision by which the Government will have to come to the rescue. But one difficulty may be pointed out, as being in the way. We took away the limit fixed on the amounts for the purpose of invoking the aid of the Act. The consequence is that the Government feels apparently aghast at the prospect of very large amounts being found necessary to be provided by them in the event of the Conciliation Boards doing their work briskly and both parties, debtors and creditors developing a desire to come to terms in the hope of getting money which may otherwise not be available. If the proviso is taken away, there is no prospect of the Bill becoming useful. There must be some statement made by the Government that, within certain limits, at least they would come to the rescue. Let it take any shape. And what is the substitute we have for this proviso? There is no use in proceeding with a Bill when there is no prospect of somebody coming to the rescue of the debtors, especially when the efforts of the Conciliation Boards will be to enable debtors and creditors coming to terms with a hope of satisfaction."

* THE HON. SIR K. V. REDDI NAYUDU:—"Sir, there seems to be some misconception about the whole thing. My objection has not been clearly realized, though, of course, my hon. Friend, Mr. Rameswara Rao, has to a large extent explained my meaning in his address.

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“ Sir, my first objection was that this is a meaningless proviso. If it is only a case of ‘ the Government *may* do it,’ and there is nothing to compel the Government, I do not really see what the use of such a proviso in the Act is.

“ Secondly, the point raised by my hon. Friend from Ganjam was that we would be fettering the hands of the future Government and that this Government cannot expect that they would remain in office for ever. He is perfectly right. I am glad that he has kept it in view for the purpose of this Act. The present Government cannot be in existence after the 1st of April 1937. Therefore he need not apprehend that anybody on this side hopes to continue in office for ever just as some people think that they can live till eternity. Whatever it may be, this proviso will, in one way or the other, be fettering the discretion of the future Ministers. In the first place, without this proviso or anything of the kind, the Government of the future will always have the power to spend moneys and help the ryots if they so choose.

“ Then, Sir, the hon. Member is perfectly right when he said that in order that this Act may be of some help, moneys must be forthcoming from some source. Hon. Members are aware that, apart from the Agriculturists Loans Act, under the rules framed thereunder the Government have agreed to do their very best up to a maximum of Rs. 2,000 in cases where there is security and where there is a possibility of the return of the money; that is done by rules and it is open to any future Government to raise that figure to Rs. 5,000, or even Rs. 50,000. If they have money, they can give any amount; and if the hon. Member happens to be in this Council at that time, I am perfectly certain he will exert himself to see that that figure is raised as much as he likes. Then there are the land mortgage banks, the ordinary banks and numerous private agencies. All these are there. That being so, by putting in a proviso of this kind, you will be fettering the discretion of the Government and compelling them to spend the moneys of the tax-payers in a particular manner, though of course you are putting it in the form of ‘ *may facilitate*.’ I think, Sir, that the power of spending the tax-payers’ money by any Government, whether it is this Government or the next Government after 1st April 1937, is a matter that should be entirely left to the Ministers of the time—the Crown’s advisors. Proposals for such expenditure can only come from the Crown. I should therefore think that there are serious objections for retaining this proviso in this Bill.”

The amendment to omit the proviso to clause 14 was put and carried.

Clause 14, as amended, was put and carried.

Clause 15.

Mr. K. KOTI REDDI:—“ For clause 15, substitute the following:—

‘ 15. It shall be lawful for the Government to pay to the creditors the amount settled under section 12, if any, or under section 13, or the amount reduced by agreement of the creditors and realises

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the amount from the debtors in not less than 20 annual equated instalments with not more than 6 per cent per annum interest on the security of the property of the debtor including that set apart for his maintenance.'

"I do not think Government will object to it."

The amendment was duly seconded.

The Hon. Sir K. V. REDDI NAYUDU:—"Sir, this is only trying to put in another form and with some additions the proviso to clause 14 which the House just now rejected. I oppose it."

The amendment was, by leave, withdrawn.

* The Hon. Sir K. V. REDDI NAYUDU:—"Sir, I move—

'In sub-clause (1) of clause 15—

"(a) In lines 5 and 6, for the words 'ought to reasonably accept,' substitute the words 'ought reasonably to accept.'

(b) In the proviso, in lines 2 and 3, omit the words 'the following.'

(c) For clause (iv) of the proviso, substitute the following clause:—

(iv) the onerous conditions, if any, subject to which the loan was granted."

(d) In clause (vi) of the proviso, for the word 'particular,' substitute the word 'particulars' and for the words 'board thinks desirable,' substitute the words 'board thinks it desirable.'

"Sir, these amendments involve only transposition of words and they are merely verbal amendments intended to make the meaning clear. They may be accepted."

12-45 P.m. The motion was duly seconded.

The amendments were put and carried.

Mr. K. R. VENKATARAMA AYYAR:—"The proviso to clause 15 is really not a proviso. It is only an explanation. What is a fair offer is what we seek to explain. Therefore I move that the word 'provided' be omitted in the first line of the proviso and the word 'the' begun with a capital 'T.'"

The motion was duly seconded.

The Hon. Sir K. V. REDDI NAYUDU:—"I do not see any objection."

The amendment was put and carried.

* The Hon. Sir K. V. REDDI NAYUDU:—"I beg to move the amendment that stands in my name, that is—

'In lines 3 and 4 of sub-clause (3), before and after the words "other than a debt incurred subsequent to such agreement" insert brackets.'

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"If hon. Members will look at sub-clause (3), they will find that brackets ought to be inserted before and after the words 'other than a debt incurred subsequent to such an agreement,' because the idea is that the words 'in respect of which' should refer to the word 'debt' in line 3 of the sub-clause and not to the word 'agreement' in line 4. If the brackets are not inserted, the words 'in respect of which' may refer to 'agreement' and not to 'debt.' Therefore in order to make the meaning clear these brackets are necessary."

The motion was duly seconded.

The amendment was put and carried.

* Mr. G. RAMESWARA RAO:—"I beg to move the amendment standing in my name, that is—

'At the end of sub-clause (3) add the following:—

"and the twelve years fixed in section 48 of the Civil Procedure Code, shall be calculated from the date on which all such amounts are recorded as paid by the board."

"The intention in moving this amendment is this: sub-clause (3) says 'any decree passed in such suit . . . etc., shall not be executed, etc., until all amounts recorded as payable under such agreement have been paid.' Therefore it disables a subsequent decree-holder from executing his decree in the usual course according to the rules of Civil Procedure Code. But there comes the question of limitation as to where the starting point should be. That must be made clear. If you want to change the law of limitation or any other enactment of a special nature it is but right that we must provide for the change with a good deal of clarity as to when the limitation begins. But according to the Bill as it stands, a subsequent decree-holder is disabled from executing his decree in the ordinary course, and the decree-holder would be entirely in the dark as to when he should start his execution proceedings. He is not in the know as to when the debts were paid. They might have been paid out of court or they might have been paid directly into the hands of the creditor in accordance with agreement. There is nothing for him even by way of caution to know as to when he is entitled to start the execution proceedings. If a record is maintained by the Board and the Board certifies as to the fact of the payment having been made on a certain date, the decree-holder will be put on guard and he would ascertain when the payments were made, so that he may not find that it is too late since the payments were made or that his execution proceedings are barred by law of limitation, even before he began to take steps. I move the amendment."

The motion was duly seconded.

* The Hon. Sir K. V. REDDI NAYUDU:—"I think such an amendment is not necessary. I quite understand that by this amendment the meaning and intention of the clause is made quite clear. The clause as it stands may not carry out the intention. If you allow the parties twelve years' time from the date of recording, it will lead to very many difficulties. A decree might be subsisting for even a larger number of

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years than contemplated by the Civil Procedure Code. I think the hon. Member will agree if the period covered by the proceedings before the Board were excluded for the purpose of twelve years limitation. Supposing a decree was passed some nine years before this Act is passed, and there is a period of only three years more for the enforcement of the decree according to the Civil Procedure Code. If the hon. Member suggests that the period of limitation shall count from the date of recording, then it will mean that the decree-holder will have 12 years from that date. That I suppose is certainly not his intention. All that the hon. Member means is that the period during which the party was prevented from executing the decree on account of this Act should be excluded for purposes of the application of the Limitation Act."

* Mr. G. RAMESWARA RAO:—"I want to make it clear as to when the fixed period starts, as to whether it starts from the date when the party comes to know; if not when else it begins to start. That is the difficulty. Therefore I suggest that it shall begin from the date on which a record has been made by the Board."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"I think this question may be taken up when we deal with clause 23. Under section 48 of the Civil Procedure Code, also the time during which a decree is not executable may be excluded. Therefore I think this amendment is not necessary now. I suggest that this amendment may be withdrawn now. When we go to clause 23 we may add a new clause if necessary, and clause 23 deals with the provisions relating to limitation."

* The Hon. Sir K. V. REDDI NAYUDU:—"I am afraid it will not be possible to accept the amendment if it is put in that form. Civil Procedure Code is a Government of India Act and if we want to amend any of the sections thereof, we cannot do so without their special permission."

* The Hon. the PRESIDENT:—"I was simply waiting for such an objection being raised by the Hon. the Law Member. The hon. Member, Mr. G. Rameswara Rao, will bring forward a suitable amendment when clause 23 is taken up."

The amendment was by leave withdrawn.

Clause 15 as amended was put and carried.

Clause 16.

* Mr. K. R. VENKATARAMA AYYAR:—"I think that this Bill has not provided for the cases where a clash might arise between the jurisdiction of insolvency courts and the jurisdiction of conciliation boards under this Bill. Clause 16 provides for a bar of entertainment of fresh suits for recovery of claims or for the execution of decrees already passed. What about the liberty of a debtor or a creditor to apply to the insolvency courts or to apply for the continuance of the proceedings already started in the insolvency courts? That is a matter which has not been provided for in sub-clause (a) or (b). If the House agrees

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possibly you may have another clause as clause (c). As the Bill stands there is the concurrent jurisdiction of two courts, viz., one, proceedings before the insolvency courts and the other proceedings before the conciliation board, which would only land the parties in clash and confusion. Therefore before we go forward with this Bill, it is essential that we should make a provision on the lines I have suggested. I mentioned this point to Mr. Ramalingam Chettiyar and he was under the impression that a provision had been made already in this clause. This Bill would be glaringly defective if you do not make a provision like that."

* Mr. T. C. SRINIVASA AYYANGAR:—"While I agree that some provision will have to be made to cover cases referred to by my Friend, Mr. K. R. Venkatarama Ayyar, I desire to say that it cannot be by an amendment of this sort. The existing system of laws dealing with this matter is sufficient. When a debt is not paid the creditor without reference to others, can go to a civil court for the purpose of enforcing his obligation. The insolvency jurisdiction is of a different character. It is not a matter between a single debtor and a creditor but it is a case of universal administration by a trustee on behalf of the whole body of unsecured creditors. Such being the case, any provision that is made shall not create difficulties in the way of insolvency administration and should avoid landing the administration in any chaos or confusion. You cannot say that the Official Assignee shall take charge of so many properties and not other properties. That will conflict with the interests of a large number of creditors. That is a matter which will have to be considered both by the Mover of the Bill as well as by the Hon. the Law Member. As to how far this Bill will or will not be in conflict with the insolvency laws, the Government should make a statement upon the policy involved in the Bill and the intention should be expressed by appropriate amendments. That is a matter which will have to be borne in mind before this Bill becomes law."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"Sir, I think it is a real difficulty. Suppose a case is before the conciliation board and one of the parties wants to apply to the insolvency court. I fear there will be a possibility under the Insolvency Act of stopping the proceedings before the conciliation board. I thought the wording used in the Bill was sufficiently comprehensive, but now I find that it is not the case. If an amendment can be made now without sending the Bill again for the sanction of the Governor-General especially in view of the fact that it is going to be sent to him ultimately for his assent, I propose that we add a sub-clause as sub-clause (3) that an application in insolvency with reference to a matter in issue before a conciliation board be stayed. I have not examined the matter myself, but if it is thought that such a clause can be added without going to the Governor-General for his previous sanction I would agree to it. Otherwise I would rather have the Bill passed as it is and add it by an amending Bill later."

1 p.m.

* The Hon. Sir K. V. REDDI NAYUDU:—"Sir, I concede that the point raised is very important, but as has already been pointed out

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various difficulties come in our way. So far as the Government are concerned, they never thought that even the insolvency proceedings would be affected by this Bill. As has been pointed out, the insolvency proceedings are of a larger import than proceedings under this Bill where matters are amicably settled by agreement between the parties. Such being the case, that the whole law of insolvency should be sought to be affected by this Bill is rather a very serious matter. (Diwan Bahadur T. A. Ramalingam Chettiyar: It is only a case of delaying the proceedings.) Not only delaying the proceedings, but for the time being they can be stopped. The Government cannot therefore give any reply to the point at once. For one thing we will have to consider the point. In the second place, although the Provincial Insolvency Act is called a provincial Act it is really an Act of the Government of India and when this Bill was sent to the Government of India for the sanction of His Excellency the Governor-General, this particular provision was not there. The Government of India have no doubt agreed to this clause, but it deals only with civil suits that are to be filed. We cannot say what opinion the Government of India may hold with regard to a clause which proposes to keep the insolvency law in abeyance during the time that proceedings are taking place on a particular matter before a debt conciliation board. It is a large order and as at present advised it is not possible for me to accept the amendment."

Mr. K. R. VENKATARAMA AYYAR:—"I did not move a regular amendment; I only pointed out a difficulty."

Clause 16 was put and carried.

Clause 17.

* Mr. M. DEVADASAN:—"Sir, this clause does not make mention of transfers made before an application is made to a debt conciliation board. Mr. T. C. Srinivasa Ayyangar pointed out some time back that the principles of insolvency law must not come into conflict with the principles which might be accepted in a Bill of this kind. I submit, Sir, that if this clause is accepted there will be serious difficulties. What can a creditor do if a debtor has transferred his property before he makes an application to the conciliation board? Can he go to a civil court? If he wants to go to a civil court, will he not be debarred by the principle of *res judicata*? This point will have to be considered before we accept the principle of the clause. In the case of insolvency proceedings, transfers made within a period of two years before an application for adjudication can be made voidable, but in this case, there is no such provision. This provision will enable an applicant before a conciliation board to transfer his property before he files an application to the board and thus defeat or delay the claims of his creditors. On the other hand it does not in any way afford protection to the creditors. So I suggest that we must provide that transfers made within a period of two months before an application is

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made to the board can also be made voidable in the same way as transfers made after an application is made to the conciliation board. Therefore I move—

*‘After the word “debtor” in line 2, insert the following: —
“within two months before an application was made and”.’*

I think I have made only a modest request and I am sure that both the Hon. the Law Member and the hon. the Mover of the Bill will accept my amendment. Even two months is not a sufficient period; at least one year should be the period, but as I feared that the hon. the Mover of the Bill might not agree to it, I have put the period as short as two months. With these words, Sir, I move the amendment.”

The amendment was duly seconded.

* The Hon. Sir K. V. REDDI NAYUDU:—“Sir, I do not quite see how the clause as amended will read. It will be—

‘Every transfer of property made, with intent to defeat or delay the creditors of the debtor, within two months before an application was made and after an application has been made to a board. . . .’

So far as this amendment is concerned, Sir, I must say that there is some point in it, but I do not know whether the amendment proposed will meet the case. The object of the hon. Mover of this amendment is to prevent transfers of property by debtors made with fraudulent intention some time before an application is made to a conciliation board. But it would be difficult to prove that a person some time before making an application to a debt conciliation board transferred his property with fraudulent intention. But both in the Transfer of Property Act and the Insolvency Act there are some provisions and some periods are fixed. I would like the hon. Member to look into those Acts and examine how far the proposed amendment affects those two Acts. The matter requires some more consideration and I suppose the hon. Mover will have no objection to the question being postponed till after lunch.”

* Mr. T. C. SRINIVASA AYYANGAR:—“Sir, may I suggest one or two more points which may be considered before a conclusion is come to on the amendment? In the first place, clause 17 itself requires consideration. In the Transfer of Property Act there is a general provision that transfers of property made with intent to defeat or delay the creditors is voidable by the creditors. That remedy which is given is on behalf of creditors who are defeated or are likely to be defeated. The avoidance must be a representative action. That is the general principle of law. There are also remedies provided in the Insolvency Act, where irrespective of fraud or the likelihood of defeating or delaying the creditors, the trustee or assignee in insolvency is given, in the interests of the general body of creditors, a right to void certain alienations which are made within a particular time before the vesting order is made. That principle of law is irrespective of

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any consideration of fraud. A right is also given to avoid certain transactions of objectionable character. These are provisions which exist now. Clause 17 contains merely a bald statement. It says:

‘Every transfer of property made, with intent to defeat or delay the creditors of the debtor after an application has been made to a board under section 4 . . . shall be voidable at the option of any creditor so defeated or delayed.’

Unless a new right is sought to be introduced or provided for, for the purpose of this Bill, I do not see the necessity for a provision like this, as the general law contains provisions for necessary remedies. Is it the intention that a suit should be able to be maintained by a single creditor instead of in a representative action as is at present possible? Would it be within the means of a single creditor to file such suit? Again, supposing a creditor brings an action and fails, can another creditor, not a party to the prior action, not bring a second action? In that case it would be very oppressive. Therefore the very provision made in clause 17 deserves consideration from all aspects whether it should exist at all and if it is intended to create a new right and if so, whether it has been adequately qualified. Then the principle contained in the amendment moved by Mr. Devadasan should also be considered. If that amendment is carried, unless a suit is brought within two months of the transfer an artificial validity is conveyed by a bar of limitation to even fraudulent transfers. For if a man were to sue on the 61st or 62nd day, then his suit will not be maintainable and the transfer of property made with fraudulent intention will be made valid. (Interruption.) You and I know how many suits have failed merely because they were late by 24 hours. For all these reasons, I submit that the whole clause, not merely the amendment, requires further consideration.”

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—“ Mr. President, Sir, I fear there is, shall I say, a want of understanding of the purport of this section. The section provides for cases in the nature of *lis pendens*. Ordinarily, under the Transfer of Property Act, when proceedings are taken before a court with regard to a certain property, any transfer of the property made during the course of the proceedings will not be binding on the other parties. But that is the ordinary civil law. So something of that nature ought to be provided for. This is a provision only to that extent and nothing more. That is why it is provided that transfers made during the period that an application is pending before a conciliation board is voidable at the option of a creditor. Section 53 of the Transfer of Property Act would not apply to such cases.”

The Hon. Sir K. V. REDDI NAYUDU:—“ It is not merely a case of *lis pendens*.”

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—“ In ordinary cases of *lis pendens*, any transfer of a property that is the subject of a suit will be subject to the decision of the court in the suit. That is the law. But in this case, the debtor goes before the board of conciliation and all his properties are supposed to be under the jurisdiction of

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the board. If he wants to make any transfer of his property during the time his application is under the consideration of the board, the transfer will be subject to the rights of the creditors under section 16. We have to make some provision to safeguard the interest of the creditors. Otherwise during the pendency of these proceedings, all the properties may be disposed of. So, it is proposed that during the pendency of the application, no valid transfer could be made so as to affect the creditors. If my hon. Friends will look at the provision from that point of view, they will see that the provision is necessary and is not covered by any other clause in this Bill. This special provision is necessary in this case."

1-15
p.m.

* Mr. G. RAMESWARA RAO:—"Mr. President, I would request the Hon. the Law Member to examine sections 53, 54 and 55 of the Provincial Insolvency Act and sections 51 and 52 of the Transfer of Property Act and to see how far this provision will fit in with the rest. The hon. Mover of the Bill wants that every such transfer shall be voidable at the option of one of the creditors. No provision is made for a transaction on the eve of insolvency though it provides for a transaction subsequent to the date of filing of the application. Even then it does not conform to the principle underlying the Insolvency Act. It is quite essential that the provisions of the Provincial Insolvency Act and of the Transfer of Property Act, I referred to above, should be examined. This is a matter in which no limitation is prescribed. If the court deems it fraudulent, it might deem it void. As has been observed by my hon. Friend, Mr. Srinivasa Ayyangar, this clause provides for a series of suits at the instance of each of the individual creditors to harass the debtor or his alienee time after time till the end of eternity; if one suit fails, another suit may be brought. If a transfer is considered not fraudulent, it must be decided once for all and no second agitation should be allowed on the point. The provision here that every transfer shall be voidable at the option of any creditor, encourages multiplicity of suits and there will be no end to litigation. There will be much harassment of the debtor. I request the Hon. the Law Member to examine the various sections on the subject and put forward a favourable draft so that there will be no more difficulty."

* Sriman M. G. PATNAIK Mahasaya:—"Sir, in the course of discussion of this Bill, so many defects have come to light. The Hon. the Law Member says that these defects cannot be rectified without the sanction of the Government of India. If the sanction of the Government of India is necessary, it must be obtained and there is no use of passing unsatisfactory legislation. This is a very important measure and the administration of this Act is going to be beset with various difficulties. I think that we should not allow this Bill to be passed at all. The best thing is to examine carefully all the provisions and to remedy all the defects, with the sanction of the Government of India, if necessary. Without that being done, there is no use of rushing through this Bill. I do not know how the defect in this clause escaped the notice of all persons. Unless the arbitration pro-

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ceedings are binding on the debtor and the creditor, the whole scheme of the Act is useless. Now, nobody will seek the assistance of the conciliation board; people would rather go to the Insolvency Court and file a suit, instead of seeking the assistance of the conciliation board. If the Legislature or the Government or the author of the Bill wants that this provision should help the people, all these defects must be rectified. There is no good of proceeding with this measure with all its defects, apparent on the face of it. I strongly urge that this Bill should be carefully examined with reference to all the provisions suggested by my hon. Friend, Mr. Rameswara Rao. Otherwise, there will be proceedings running parallel to one another in different courts. What is the good of that? Nobody wants that state of things to exist. We know the defects of the measure; even at this late stage, let us try to remedy them."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"I suggest that the consideration of clause 17 might be postponed, till after lunch."

This suggestion was agreed to by the House.

Clause 17-A.

* The Hon. Sir K. V. REDDI NAYUDU:—"Sir, I beg to move the amendment standing in my name:—

'For clause 17-A substitute the following clause:—

"17-A. Any alienation of land for a fair price made in pursuance of or to carry out the agreement mentioned in section 12 shall not be considered as a fraudulent preference under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, nor shall such alienation be voidable under section 53 of the Transfer of Property Act, 1882."

This is merely recasting the clause with a view to make the meaning clearer."

Mr. G. T. BOAG:—"I second it."

* Mr. G. RAMESWARA RAO:—"Sir, I would say that alienation that is made permissible ought to be safeguarded by giving notice to all the creditors. The transfer may be a nominal one or it may be a fraudulent one. Inasmuch as this clause deprives the ordinary courts of their powers to give a finding on the merits of the case, the alienation should not be considered good, unless it is permitted after notice is given to all the creditors. If notice is given to all the creditors, the land will fetch its best value and the creditors may be satisfied to the fullest value of the land. Then only, the alienation will be above criticism in any court of law which is seized with jurisdiction over such matters. I urge that the words 'after notice to all the creditors' should be added after the word alienation in line 1. If notice is given to all the creditors, any one of them may offer the highest price for the land; in that case, both the creditors and the debtor will be benefited. I hope the Hon. the Law Member will see the justice of my statement; if it is

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intended that the land must fetch its highest value, the purpose will be best served by effecting alienation after notice is given to all the creditors concerned. With these words I move the following amendment standing in my name:—

*‘After the word “alienation” in line 1, add the following:—
“after notice to all the creditors”.’*

* Mr. T. C. SRINIVASA AYYANGAR:—“Sir, I second the amendment. I desire to invite the attention of the House to the original clause 17-A as well as to the clause sought to be substituted by my Hon. Friend, the Law Member. In both the cases the provision is this; if a decision were arrived at by conciliation by the board, any alienation for a fair price made in pursuance of or to carry out the agreement mentioned in section 12 shall not be considered as a fraudulent preference. The transfer may be without the permission of the board or without adequate notice to the parties concerned; otherwise the property sought to be transferred might have fetched a higher price; the creditors will be prejudicially affected if notice is not given to them. My friend, Mr. Rameswara Rao, has brought forward this amendment to see that assurance of a fair transfer is given and at the same time the possibility of litigation against the transfer is also avoided. Where is the guarantee that the transfer is bona fide without the sanction of the board or that the price fixed is fair unless the people who are affected by the transfer have an opportunity of saying whether the price is fair or not?”

The House then adjourned for lunch.

(After Lunch—2-30 p.m.)

New clause 12-B.

* The Hon. the PRESIDENT:—“We shall now take up new clause 12-B as proposed by Mr. Krishnayya Choudari.”

* The Hon. Sir K. V. REDDI NAYUDU:—“May I make a statement on that point, Mr. President, before we proceed? I am told that I was not clear this morning and so, I want to make the position quite clear. So far as sub-clause (2) is concerned, it will have to be withdrawn; otherwise, I am afraid the Government cannot agree to the new clause. So far as the first sub-clause is concerned, the Government would agree to it provided a date is fixed, the principal on which date will be the guiding figure for purposes of doubling, etc.”

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—“Sir, I also mentioned this morning that the understanding the other day was that of the two sub-clauses here, the second would be withdrawn. The Hon. the Law Member has just now stated that there should be a modification of the first sub-clause also, with reference to the date. Even though Mr. Krishnayya Choudari and I think that such a course would not give relief to as many people as we want, still, out of:

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deference to the views expressed by the Hon. the Law Member and to facilitate a settlement of the question, I shall move the amendment that has just been circulated to Members. It is in these terms:—

‘In the amendment of Mr. P. V. Krishnayya Choudari, to insert a new clause 12-B, in paragraph (1), at the end, omit the words “of the principal” and substitute the words “due on the 1st of June 1933”.’

I also formally move that the second sub-clause of Mr. Krishnayya Choudari’s amendment may be omitted. As I said, Sir, it is only as a compromise that I am moving this amendment.”

MR. P. V. KRISHNAYYA CHOUDARI:—“Mr. President, Sir, last time when we discussed this question, the hon. Member informally accepted the first portion of my amendment; and it was also agreed that I should withdraw the second portion. This morning, however, he stated that it would be desirable to have some date fixed; but if the date is to be fixed in respect of the first portion of my amendment, I am afraid the amendment will serve no useful purpose at all.”

* The Hon. the PRESIDENT:—“Is the hon. Member opposing the amendment moved by Mr. Ramalingam Chettiyar?”

MR. P. V. KRISHNAYYA CHOUDARI:—“I am not opposing; I am just appealing to the Hon. the Law Member. . . .”

* The Hon. the PRESIDENT:—“My difficulty is that the amendment has not been seconded yet. If the hon. Member will first second it and then proceed, that will be better.”

MR. K. A. NACHIYAPPA GOUNDER:—“I second the amendment, Sir.”

MR. P. V. KRISHNAYYA CHOUDARI:—“If it is now proposed to fix a date in regard to the first portion of the amendment”

DIWAN BAHADUR T. A. RAMALINGAM CHETTIYAR:—“I am sorry, Sir, I have to modify my amendment slightly. We were thinking only of past debts; this bill will apply for the future also. I, therefore, beg leave to withdraw my amendment. I shall move a fresh one.”

The amendment was by leave withdrawn.

* DIWAN BAHADUR T. A. RAMALINGAM CHETTIYAR:—“Sir, I move the following amendment:—

‘Omit sub-clause (2) of new clause 12-B (as proposed by Mr. P. V. Krishnayya Choudari), and add at the end of sub-clause (1) the following:—

“and if the debt was incurred before the first day of June 1933 twice the amount due on the first day of June 1933 ” ’.

MR. K. R. VENKATARAMA AYYAR:—“I second that amendment.”

MR. P. V. KRISHNAYYA CHOUDARI:—“Before I withdraw the second portion of my amendment, I want to appeal to the Hon. the Law Member to accept it, for the benefit of the people. When once

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we agree to fix a date in regard to debt conciliation, there is no reason why we should not agree to the second portion of my amendment. If, however, he cannot agree to it, I withdraw that portion."

* The Hon. the PRESIDENT:—"Will Mr. Ramalingam Chettiyar read out his amendment once again?"

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"Mr. Krishnayya Choudari's original amendment reads thus:

'Insert the following as new clause 12-B:—

"12-B. In any scheme of debt conciliation under this Act, no creditor shall be allowed a greater amount in satisfaction of both principal and interest than twice the amount of the principal."

"The whole of it will remain. We then add the following to it:—

'and if the debt was incurred before the first day of June 1933, twice the amount due on the first day of June 1933.'

* The Hon. Sir K. V. REDDI NAYUDU:—"Of course I accept the amendment; but I am afraid the wording is not quite clear, to carry out the full intention that is agreed upon. The intention, as far as I understand, is this: that in regard to debts which had already been contracted before that date, their figure will be that which was due on that date, and the settlement should not be for an amount exceeding twice that amount. In the case of moneys lent subsequent to that date, the figure will be the amount of the principal, beyond doubling which the board cannot go. That being the intention, I am not quite clear whether the word 'and' after the word 'principal' will carry out the meaning. Therefore, I submit that subject to drafting and provided the intention is carried out, I agree to this."

2-45
p.m.

* The Hon. the PRESIDENT:—"I think the House is ready for a vote. The question is—

'Omit sub-clause (2) of new clause 12-B (as proposed by Mr. P. V. Krishnayya Choudari), and add at the end of sub-clause (1) the following:—

"and if the debt was incurred before the first day of June 1933 twice the amount due on the first day of June 1933".'

The amendment was put and carried.

Raj Kumar M. A. MUTHIAH CHETTIYAR of Chettinad:—"Mr. President, I beg to move the amendment standing in my name, namely—

'in the amendment of Mr. Krishnayya Choudari, add the following at the end:—

"Provided that in cases where any debt was renewed, the amount of the renewed debt shall be the amount of the principal".'

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Sir, the object of moving this amendment is this. I agree with the clause that the debtor should not be made to pay more than double the amount; but the question is how this double amount should be computed. I think the legislature should at this stage itself make it very clear how they want to apply this principle. I shall illustrate it. Suppose a person borrowed in 1900 a sum of Rs. 1,000 under a mortgage and paid interest of a few hundred rupees and has not paid the principal, but renewed the bond somewhere about 1910 and again somewhere in 1920. A suit is filed in 1926. It may be that a suit is filed for Rs. 4,000 and another for Rs. 500 for interest. Is it open to the debtor to say that he borrowed only Rs. 1,000 in 1900? Under the provisions of this enactment, is he bound to pay Rs. 2,000, though he had paid interest during the previous 26 years even more than Rs. 2,000 and claim a further repayment from the person who lent the money first? I shall just illustrate an extreme case. Even assuming the whole transaction is re-opened from the beginning, it will come to more than Rs. 2,000 and wherever it is renewed, the renewed amount should be made the capital. There may be instances where the debtor might have paid a certain portion of interest and for the rest executed a renewed bond. Is it not fair that the amount becomes the principal; and if the debtor had returned the entire amount, the creditor would certainly have lent that amount to another person and earned interest in respect of the whole transaction. After all, one has to be careful that a suit is not filed for more than double the amount mentioned in the document. That is the object of the amendment. I do not think I am cutting against the main provisions of the bill in regard to the time-limit."

* Mr. T. C. SRINIVASA AYYANGAR:—"I second the amendment, Sir. There is something to be said for and something against this amendment. There is necessity for introducing a provision like this. We are familiar with the transactions which are known as tavanai transactions, i.e., deposits which are renewed regularly after fixed intervals. That being so, the question would arise what is the meaning of the words 'amount of principal.' It will be a matter of difficulty if the same firm continues to keep the deposit renewing it; and are we to take the original loan or the amount of loan which stands at the third or fourth renewal. Here, the wording as it is, is likely to drive people into court much quicker than they would otherwise do. In the circumstances, the amendment deserves to be considered."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"Mr. President, I am sorry that the very object of the amendment proposed by my hon. Friend, Mr. Krishnayya Choudari, will be defeated by accepting the amendment now sought to be introduced. What will be done is, every six months there will be a renewed pro-note and interest will be added on to the principal. So, the result will be that the rule which is supposed to apply to the benefit of the debtor will apply to his detriment because the creditor will try to take new pro-notes. I think it will be most subversive of the very object of the Bill if this amendment is accepted. I do not think we are going to do any good

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by this Bill if we are going to accept such amendments. I would much rather prefer the dropping out of the whole amendment rather than accept this amendment. It is a dangerous thing to which Mr. Satyanathan in his report has referred. He refers to a case of Rs. 100 lent after a time swelling to Rs. 4,000 by adding interest to the principal and going on renewing the pro-note. It is to avoid such things that we want legislation."

* Mr. K. R. VENKATARAMA AYYAR :—" Mr. President, if you want to give effect to the principle of damdupat, it is no use recognizing these tavanai transactions of accumulating principal and interest, as it would mean the very negation of the law of damdupat. If relief is sought to be given to agriculturist debtors, then obviously there can be no play for this sanctity of compound interest. If on the other hand, you think there should be the freedom of contract between the lender and the borrower, then you must get rid of the ancient rule of damdupat as obsolete and out-of-place in modern times. Real benefit could be secured to these agriculturists only by a wise adjustment of the ancient rule of damdupat to modern conditions. On the one hand, you should not make it impossible for them to get loans by erecting too stiff a barrier of a moral standard; on the other hand you should try to relieve them against transactions which in their nature tend to be usurious. Now, the fair way to reach a result is by adopting some such compromise as after considerable cogitation and exchange of ideas we have been able to reach this morning. I think we have reached a wise solution when we have adopted this law of damdupat in part. Now to go back to the idea of upholding tavanai transactions is, I think, to deal a death-blow to what we have already agreed about."

The Hon. Sir K. V. REDDI NAYUDU :—" Sir, I think the amendment which has just now been passed after an agreement on both sides is a sufficient protection to the creditors and I feel that no further protection is justified."

Raj Kumar M. A. MUTHIAH CHETTIYAR of Chettinad :—" Sir, the Hon. the Law Member said that the amendment which has just now been passed is a sufficient protection. I only wish to remind the House that that protection is only with regard to transactions up to 1933, but what about transactions or suits which may be filed in 1940?

" Then, Sir, with regard to what has been stated by the hon. Member from Madura who knows 'tavanai' transactions so much, I am very sorry to differ from him as to his interpretation of 'tavanai.' With his long experience, I am sure he would have seen cases where 'tavanai' transaction is considered very sacred; and in regard to date as to the payment of interest, it is considered to be the date on which interest automatically accrues or the principal and interest is paid. I am not referring to 'tavanai' alone because it is peculiar to a community of bankers who are accustomed to banking transactions and who are very careful about keeping credit on particular dates of payment; but I am referring to ordinary transactions which are covered by mortgages. Even in such cases there will be hardship felt. That is the object of my amendment."

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* The Hon. the PRESIDENT:—"I will put the amendment to the vote of the House. The question is—

'In Mr. Krishnayya Choudari's amendment, add at the end the following words:—

"Provided that in cases where any debt was renewed, the amount of the renewed debt shall be the amount of the principal." "

The amendment was put and lost.

New clause 12-B as amended was put and carried.

Clause 17.

* The Hon. the PRESIDENT:—"Clause 17 (Mr. Devadasan's amendment is now under consideration).

Mr. G. RAMESWARA RAO:—"Clause 15, Sir."

* The Hon. the PRESIDENT:—"I think the understanding was that when we go to clause 23, a suitable amendment might be proposed for clause 23 and not clause 15. I saw notice of an amendment given by the hon. Member. He can deal with it when we come to clause 23."

* The Hon. Sir K. V. REDDI NAYUDU:—"Sir, I think clause 17 is quite all right provided my amendment is carried. My amendment is only a reproduction of the words in the Central Provinces Act which have been omitted from the clause. Hon. Members will see that some dots are put in in the Bill; i.e., after the words 'Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a board under section 4.' Then you find some dots; that portion has been removed by the Select Committee that is the portion which is found in the Central Provinces Act. Those words are 'and until the agreement registered in pursuance of which application has been fully carried out.' That is, you limit the period to the close of the proceedings in the arbitration courts. If we omit that portion, it would mean that the clause will apply for all time, even after the proceedings are closed. In order to save that, I move the following amendment of which I have given notice, namely:—

'After the words and figure "under section 4", insert the words—

and until the agreement registered in pursuance of such application has been fully carried out "."

* The Hon. the PRESIDENT:—"But it has been agreed that amendment 51-A moved by Mr. Devadasan should be considered."

* The Hon. Sir K. V. REDDI NAYUDU:—"Yes, Sir, I am coming to that. If my amendment is accepted no further amendment would be necessary and the two months rule will be a very difficult one. My reasons are these."

* The Hon. the PRESIDENT:—"There is no difficulty in discussing the two amendments together."

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* The Hon. Sir K. V. REDDI NAYUDU:—"My submission is this: Government cannot accept the amendment of Mr. Devadasan for this reason: In the first place we have got the Transfer of Property Act. We have also got the provisions of the Provincial Insolvency Act. I am afraid that to incorporate such a provision also in this Bill would lead to difficulties. After all to give jurisdiction to this Board to enter into the question of fraudulent transactions or otherwise of transactions that took place even before the matter came up before this Board would be giving them a jurisdiction which would not be justifiable: It is enough in the opinion of the Government that they are given power only in regard to transactions that have taken place while the matter is pending before this Board on the principle of the doctrine of *lis pendens* and certainly the existing provision would cover such cases. It means this. During the period these proceedings are pending before this body created under this Act for all practical purposes it will be considered a court. In other words to alienations made when the proceedings are pending before this Board the doctrine of *lis pendens* will apply and any extension of the period would not be justifiable. I therefore oppose the amendment moved by Mr. Devadasan. I move my amendment."

The Hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

* The Hon. the PRESIDENT:—"The two amendments before the House are these: The first is the amendment of Mr. Devadasan, i.e.—

'After the word "*debtor*" in line 2 insert the following:—

"within two months before an application was made and".'

"The Law Member's amendment is as follows:—

'After the words and figure "*under section 4*" insert the words "*and until the agreement registered in pursuance of such application has been fully carried out*".'

* Mr. T. C. SRINIVASA AYYANGAR:—"Sir, I quite agree now with my Hon. Friend, the Law Member. I say this as I raised a doubt this morning. The matter has been to a certain extent set at rest. He says this is a special remedy given to cover a possible set of new cases, and that this Court, namely, the Board of Conciliation will not usurp the functions of the ordinary Civil Courts under the Civil Procedure Code or the authorities under the provisions of the Presidency or Provincial Insolvency Acts. But if cases of fraudulent alienation which may be made between the date of the presentation of the application and the final adjudication of application by the Conciliation Board do come to light they must be capable of being relieved by a less costly and less cumbersome procedure. The Hon. the Law Member's amendment fixes the time-limit to that extent and it is a very agreeable amendment. It is necessary in these circumstances that the remedy so provided should be capable of being given by the Board of Conciliation itself on application. I therefore move my amendment—

'For the words "*shall be voidable at the option of any creditor so defeated or delayed*" substitute the following:—

"shall be voidable by order of the Board on application by the creditors so defeated or delayed."

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“The amendment which I now move is for two possible reasons. One is it is not voidable by an application on the part of any single creditor. Else another creditor may again move and thus there may be endless succession of applications. To avoid successive applications the amendment provides for application on behalf of all creditors. In such applications all may join or some may move giving notice to others and such a procedure may be provided for by rules. Therefore along with the amendment of the Hon. the Law Member, the amendment I move will have the desired effect of limiting the jurisdiction and at the same time conferring jurisdiction upon the Board to avoid fraudulent transactions, by the summary process of applications.”

Mr. P. PEDDI RAJU:—“I second it.”

* Mr. K. R. VENKATARAMA AYYAR:—“I desire to associate myself with the Law Member's amendment. The object of this legislation is to leave unaffected as far as possible the general law in the ordinary proceedings before the civil courts. The object of this legislation is as far as possible to regulate the proceedings and procedure before the Board of Conciliation specially set up under this Act. In that view, any provisions which are in the nature of substantive law must be so framed as not to outstep the needs of the special legislation. We are enacting in a general way by way of amendments to various well-known provisions already existing in the statute law principles embodied in those provisions. We have only to provide against particular cases of mischief of fraudulent transfer after the initiation of proceedings for the settlement of a debtor's debts. That particular mischief is sufficiently provided against by the enactment of a clause such as is now put in under clause 17 with the amendment introduced by the Hon. the Law Member. You limit the provision to the particular case of fraudulent transfer after the initiation and before the completion of proceedings under this Act. That ought to be the limited purpose for which such a clause ought to be enacted. Then the question naturally arises who is the authority by resorting to whom this avoidance of the fraudulent transfer is effected. If you left it unspecified, which you would have done but for Mr. Srinivasa Ayyangar's amendment, the final authority would be the ordinary civil court without resorting to which you cannot fulfil the purpose. That would mean dilatory legal proceedings. Side by side you would have to institute parallel proceedings before the ordinary civil court for the avoidance of fraudulent transfer. That would introduce embarrassment and cumbersomeness which ought to be avoided. It is for that reason Mr. Srinivasa Ayyangar's amendment specifies that the avoidance must be by the Board on a summary application made under the rules according to which notice may be issued to the other creditors. I think in the light of these observations the House may proceed to vote.”

* Sriman M. G. PATNAIK Mahasaya:—“The Hon. the Law Member explained that it is only a summary jurisdiction given to the conciliation board. So questions of validity of fraudulent transactions might not be considered by that Board and my friend, Mr. T. C. Srinivasa Ayyangar, accepted that proposition. If so I do not see how he can now ask for fraudulent transaction being set aside by the Board

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itself. Of course the clause referred to simply says that the right is given to a creditor or creditors to move the appropriate court of law to set aside any alienation made during the pendency of the proceedings before the conciliation board. If that is so I absolutely see no reason why the board should go into the complicated question whether an alienation is fraudulent or not. If you want to invest the board with any such jurisdiction I think the board also should be empowered to go into the question of any fraudulent transaction previously made, before the application. Why should this conciliation board be empowered to consider the question of transfers during the pendency only? It is not all transfers but only such transfers as have been made with a view to defeat or delay the creditors that come within the clause. The question will have to be gone into by the conciliation board. If the board decides one way or the other the next question will be, will there be an appeal and if so to whom? So unless all these things are provided for I do not think this amendment will be of any use. My friend has also stated that there should not be a number of applications but all the creditors who are so defeated or delayed must join. That is another difficulty. Of course one person cannot do it. Therefore there will have to be a regular enquiry by the board; a new civil court will have to be constituted. So on these grounds the enquiry into the transfer will become very cumbersome. Then the scheme of the Act is that the execution should be left to the ordinary court.

“ If that is so, I do not see why the amendment of Mr. T. C. Srinivasa Ayyangar should be accepted, especially when he has accepted the principle laid down by the Hon. the Law Member. He said it was only a summary procedure, that the application of the doctrine of *lis pendens* should be provided for on the lines on which relief had been afforded under the Central Provinces Act and that only the limits of the period have been fixed and not the way in which it should be worked out. Therefore, I oppose the amendment.” 3-15 P.M.

* Mr. M. DEVADASAN:—“ Mr. President, Sir, I feel I am bound to make my position clear, and in doing so I oppose the amendments moved by Mr. T. C. Srinivasa Ayyangar and the Hon. the Law Member. I submit, Sir, that the alienations referred to in that clause relate to the transfers of property during the pendency of the proceedings before the board. What is sought to be achieved by my amendment is to protect the creditors against alienations or transfers of property which one might be tempted to make before he resorts to the conciliation board. So far as the petitioner is concerned, there is less room for him to do mischief after he resorts to the conciliation board. But if this principle is accepted, there is greater room for mischief being done. When we take up the case of any petitioner, either debtor or creditor, we always consider and examine the outstanding assets and liabilities of any petitioner before the application is made and then work out a settlement. It is the duty of the Members of this House to prevent any petitioner from doing mischief even before he resorts to the conciliation board, and we cannot confine our assumptions only to cases of mischief, as my hon. Friend, Mr. K. R. Venkatarama Ayyar, said, which one might feel tempted to do during the pendency of the

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proceedings before the conciliation board. Once he resorts to the conciliation board, he has to obey the conciliation board and then he cannot do so much mischief as he can before he resorts to the conciliation board. The question of *lis pendens* is applicable to transfers made during the pendency of proceedings before the board. If the principle is accepted, there is no necessity for a clause of this kind at all. Apart from my amendment, I think the whole question will be solved in this way. If we remove the words 'after an application has been made to a board,' then it will read that any transfer made either before or after application is made to the board shall be voidable at the option of any creditor or debtor so defeated or delayed. In that case, the clause can be made more comprehensive, and there cannot be any possibility of any mischief being done either before or after one resorts to the conciliation board. With these words, I oppose the amendment."

* The Hon. the PRESIDENT:—"Is the hon. Member pressing his own amendment?"

Mr. M. DEVADASAN:—"Yes, Sir."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"Sir, I have already said that the idea of this provision was to introduce something in the nature of the provision in the Transfer of Property Act relating to *lis pendens*. I also said that it was not the intention that this section should take the place of the provisions in either the Transfer of Property Act or the Provincial Insolvency Act with reference to the avoidance of fraudulent transactions. This will not affect them in any way. So, my hon. Friend, Mr. Devadasan, will realize that there will be no need whatever for introducing his amendment, viz., that any transfer within two months prior to the application should be void, because the ordinary provisions in the Insolvency Act will remain, and if any insolvency petition is filed, the provisions in the Insolvency Act will also apply. He also said that if the words 'after an application has been made to a board' are removed, he would have no objection. Then, there will be no need for the clause at all, because the clause as it will then stand will be covered by the Transfer of Property Act.

"This is only by way of introducing the principle of *lis pendens*. If it is so, then the question will be asked, why do you want to introduce the clause when there is a clause which refers to *lis pendens* in the Transfer of Property Act. It may be seen that it is only to the transfer of the suit properties that the section of the Transfer of Property Act will apply. A transfer will not be binding on the other parties to the suit. That is the provision in the Transfer of Property Act. Here the persons come before the board and not the properties. It cannot be said that the immovable property is the subject-matter of litigation here. So, the *lis pendens* in the Transfer of Property Act will not apply. That is why we wanted that some provision should be made in this Bill of the nature of *lis pendens*. Such being the case, as was explained by Mr. K. R. Venkatarama Ayyar, we want to make it as much limited to the object of the Bill as possible. That is why to the extent necessary we have made it applicable, and the present

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amendment of the Hon. the Law Member reinstating the Central Provinces provision will make that object quite limited to the four corners of the Bill, namely, during the time an application is pending before the board and an agreement is entered into and worked out. Only during that time this provision will apply, neither before nor after. So, it is confined to the strict limits of the objects of the Bill, and no objection can be raised on that score.

“Then, the question was raised, why do you want to give power to the board for that purpose under the amendment proposed by Mr. T. C. Srinivasa Ayyangar? Otherwise, what will happen? There will have to be a regular suit in the civil court. Our object is to have a summary remedy and avoidance of expenditure. Both these objects will be frustrated by allowing recourse to ordinary suits in a court of law. That is my answer to Mr. Patnaik when he objects to jurisdiction being given to the board for settling this matter. After all, the board is going to decide only questions of transfer after the application is filed and before an agreement is come to and is worked out. Such being the limitation of the jurisdiction that is given to the board, I beg to submit, Sir, this is a case in which speedy remedy and speedy decision are absolutely necessary, the provisions of this Act cannot be otherwise worked out at all. Under those circumstances, I oppose the amendment proposed by Mr. Devadasan and accept the other two amendments proposed by the Hon. the Law Member and Mr. T. C. Srinivasa Ayyangar.”

* The Hon. Sir K. V. REDDI NAYUDU:—“I have only to add that the arguments advanced fully show the need for my amendment and that of Mr. T. C. Srinivasa Ayyangar, and the reason why we cannot accept the amendment of Mr. Devadasan. I have only to say this, namely, that the object of this clause is for the purposes of this Act alone. It will not affect the Transfer of Property Act. It will not affect the Provincial or the City Insolvency Acts. It is intended only for the purpose of removing difficulties that may arise in the course of the proceedings in these boards. For instance, if a debtor should, while the proceedings are pending before the board, transfer his property and thereby creates difficulties for the board in its attempt to settle the debt and make arrangements for its discharge, this clause will apply. Under those circumstances, Sir, the Government will not object to the amendment of Mr. T. C. Srinivasa Ayyangar.”

* The Hon. the PRESIDENT:—“I think the House is ready for a vote. I will first put Mr. Devadasan's amendment.”

Mr. M. DEVADASAN:—“In view of the explanation of the Hon. the Law Member, I beg leave to withdraw my amendment.”

The amendment was by leave withdrawn.

* The Hon. the PRESIDENT:—“I will put the Hon. the Law Member's amendment to the vote of the House. The question is:

‘After the words and figure “under section 4,” insert the words
“and until the agreement registered in pursuance of such
application has been fully carried out”.’

The amendment was put and carried.

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* The Hon. the PRESIDENT:—"Mr. T. C. Srinivasa Ayyangar's amendment is for the vote. The question is:

'For the words "shall be voidable at the option of any creditor so defeated or delayed," substitute the following: "shall be voidable by order of the board on application by the creditors so defeated or delayed".'"

The amendment was put and carried.

Clause 17 as amended was then put and carried.

Clause 17-A—cont.

Consideration of the amendments of the Hon. Sir K. V. Reddi Nayudu and Mr. G. Rameswara Rao, moved before lunch, was resumed.

Mr. G. RAMESWARA RAO:—"After the agreement come to between the Hon. the Law Member, myself and Mr. T. C. Srinivasa Ayyangar, I do not press my original amendment No. 55 which I moved before lunch."

The amendment was by leave withdrawn.

* M. T. C. SRINIVASA AYYANGAR:—"Sir, in the amendment to clause 17-A moved by my Hon. Friend, the Law Member, I move—

'Insert the words "with the sanction of the board" after the words "a fair price made."'

I may at once mention the object of the amendment. Clauses 17 and 17-A should be read together. For the purpose of the efficient functioning of the Act and relief to be given, bona fide transfers should be protected. It is to avoid any fraudulent transfer that clause 17 was enacted. Now clause 17-A carries out the converse idea. That is, if any bona fide alienation has been made for a fair price for the purpose of carrying out the agreement that might have been arrived at and to give effect to it and also with the permission of the board, no court whether functioning under the Provincial Insolvency Act or the Presidency Insolvency Act taking cognizance of a suit under section 53 of the Transfer of Property Act shall call this alienation into question, because the provision for approval of the board would guarantee the propriety of the transfers. If it is to avoid any collusive transfer that the amendments were proposed by Mr. G. Rameswara Rao, that object has been achieved by the insertion of this expression 'with the permission of the board.'"

The motion was duly seconded.

* The Hon. the PRESIDENT:—"The motion is:

'In the amendment of the Hon. the Law Member, after the words "a fair price made," insert the words "with the sanction of the board".'

"Both amendments are for the discussion of the House."

The amendment of Mr. T. C. Srinivasa Ayyangar was put and carried.

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* The Hon. the PRESIDENT:—"I will now put the Hon. the Law Member's amendment, as amended, to the vote of the House.

"The question is:

'For clause 17-A, substitute the following clause:—

"17-A. Any alienation of land for a fair price made with the sanction of the board in pursuance of or to carry out the agreement mentioned in section 12 shall not be considered as a fraudulent preference under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, nor shall such alienation be voidable under section 53 of the Transfer of Property Act, 1882." "

The amendment was put and carried.

Clause 17-A as amended was put and carried.

Clause 18.

Rao Bahadur P. C. MUTHU CHETTIYAR:—"I beg to move—

'For clause 18, substitute the following:—

"18. An application for revision shall lie against any order passed by the board and also an appeal shall lie to the civil court against any order passed by a board." "

The hon. Member spoke in Tamil in support of the amendment:—

"போர்டு தீர்மானம் பைனலாக கண்டிருப்பது போரூது. சரியல்ல. ஆனால் பார்டிக்கு சமாதானம் இல்லாதிருந்தால் சிலில் கோர்ட்டுக்கு போர்டு தீர்மானத்துக்குமேல் ரிவிஷனோ அப்பீலோ இருக்கவேண்டும். இதுதான் பொருத்தமாகும். அதிகாரிகளுக்கே நியாயத்தில் அதிக ஜவாப்தாரித்துவத்தை உண்டாக்கும், பார்டியினிடத்தில் அவர்கள் நடந்துகொள்வதில் சில சந்தர்ப்பம் கோபம் உண்டாகும். நியாயம் இதுதான் என்று இருந்தாலும் எனக்கு இப்படித்தான் மாற்றி செய்யவேண்டுமென்று தோணுகிறது என்று தீர்மானம் செய்வார்கள். முடிவான பவருடைய அதிகாரிகளிடம் இந்த குணங்களை எல்லாம் அறிகிறோம்.

"பல காரணங்களை உத்தேசித்து ரிவிஷனோ அப்பீலுக்கோ இடமிருக்க வேண்டும்.

"கிளாஸ் 19-ல் போர்டார் தவறு தெரிந்தால் அவர்களாக ரிவிஷன் செய்ய அதி காரம் கண்டிருப்பது போரூது. பார்டிக்கு இருக்கவேண்டும்."

For want of a seconder the amendment was declared to have fallen through.

Clause 18 was put and carried.

Clause 19.

The Hon. Sir K. V. RENDI NAYUDU:—"Sir, I beg to move—

'In line 3, before the words "review any order," insert the words "or on its own motion at any time."'

"The amendment is self-evident and I am sure it will be accepted."

Mr. P. PEDDI RAJU:—"I second it."

The amendment was put and carried.

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Mr. G. RAMESWARA RAO:—"I move—

'In the proviso, omit the words "and be heard" and add the following at the end:—

"and hearing them, if they choose to be heard."'

"Mr. President, Sir, the original clause states 'and be heard.' It looks as if it was entirely obligatory on the part of the board to hear the parties, but it does not make any provision for the parties concerned not appearing before it and claiming audience. I am only providing for a case where a man served with a notice does not choose to respond but sleeps away in his house, in which case the board ought not to be statutorily under an obligation to go to him and hear him. This is only a verbal amendment."

The Hon. Sir K. V. REDDI NAYUDU:—"There is notice given to appear and be heard; it is not necessary that the board should wait."

Mr. G. RAMESWARA RAO:—"If that is so, I withdraw my amendment."

The amendment was by leave withdrawn.

Clause 19 as amended was put and carried.

Clause 20.

* Mr. G. RAMESWARA RAO:—"I move—

'For the words "but not" in line 3, substitute the word "or".'

"Mr. President, Sir, here seems to be a ban against lawyers as such, and I stand up here to show that they ought not to be disenfranchised or disqualified from exercising their profession whenever professional help is sought of them. The clause unfortunately says 'Any party may be permitted to appear by an agent authorized in writing but not by a legal practitioner.' This sort of boycotting of the members of the Bar is a thing which I feel rather strange in a member of the Bar who is now serving as the Law Member. I do not want that he should do a disservice either to himself or to the members of the Bar by putting this bar upon them. I only say that if any litigant is so interested as to seek the assistance of a professional man, he ought not to be denied the right, nor could the Bar be debarred from rendering such assistance by an Act of the Madras Legislature. The Act is sufficiently complicated with the law of alienation, with the law of *lis pendens*, with the law relating to fraud and so on; and so it is absolutely impossible for a stranger even of the reputation of being a retired revenue official, who knows nothing of the law, to administer it. So it is but right that the board must be helped by proper guidance, by a member who is equipped with the necessary information and knowledge of the ordinary procedure regarding such matters as come up as a matter of routine before the civil courts. So to say to a member of the Bar that he ought not to appear before the board is something which is derogatory both to the prestige of the House and the prestige of the profession of law. If a lawyer chooses to appear even as *amicus curiae* and wants to offer his help and assistance for the administration of justice, I think it is

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not fair, either to the board which seeks his help or the legal practitioner who offers his assistance, to say that he has no right of audience and that the board has no power to hear him. Therefore, I appeal to the hon. the Mover, himself a lawyer, and the Hon. the Law Member who represents the Bar, to see that no such permanent ban is put on members of their own profession."

Rao Bahadur P. C. MUTHU CHETTIYAR in seconding the amendment made the following speech in Tamil:—

“எந்த பார்டிக்காவது போர்டு விசாரணையில் சகலக்காரர்கள் நேரில் அல்லது எழுத்து மூலமான ஆதரைஸ்டி ஏஜன்டு வரலாமென்று கண்டிருப்பது போருது.

“இதில் (Legal practitioner) லீகல் பிராக்டிசனரும் வரலாமென்று காண வேண்டும் என என் அமெண்டி மெண்டி.

“ஆனால் இந்த ஆக்டானது பொருத்தமாய் நிறைவேறத் தகுந்த மாதிரி யிலில்ல என்பது தெரிந்த விஷயம்.

“பார்டிகளும் விவேகிகளாகவே இருக்கவேண்டுமென்பது கருத்தா, அல்லது பார்டிகள் நேரில் வந்து ஆஜராக வேண்டுமென்பது கருத்தா. அல்லது லாடவுட்டி கள் ஜவாப்தாரித்துவ மில்லாது நியாயத்தை பிதற்றி போராடவேண்டுமா. ஒரு படித்த ஜவாப்தாரித்துவம் பொருந்திய லாயர் வருவது தப்பா அதனால் என்ன கெடுதல் என்பது தெரியவில்லை.

“லாயர்களில் எங்கேயோ எப்பவோ யாரோ சிலர் தப்பு வழியை சொல்லலாம். விவகாரத்தை இழுத்து விடுவது அபூர்வமாய் காணலாம். பெரும்பாலோர்கள் தங்கள் படிப்பை உபயோகம் வீணாக்க பிதற்றார்கள். இன்டரஸ்டி இல்லாத ஒரு மனிதரிடம் பார்டிகள் தங்கள் கஷ்டியை பல்மாக தாக்கி சொல்லி அதை நியாயமில் லாததை நீக்கி எவ்வளவு நியாயமோ அதை மட்டும் போர்டுக்கு சுபலமாக தெரிவிக்கவும் போர்டார் எதை எதை கெவனிக்க விட்டுவிட்ட காயித்தை எடுத்து காட்டவோ எதுவல்லவா. அன்னியில் அவர்களை குறைவாக நினைப்பது பெரும் தப்பாகவும் மரியாதையின்றியும் தோண் வில்லையா!

“நியாயத்துக்கு சரியில்லாவிடில் கவர்ன்மெண்டு அட்வகேட் ஜெனரலை ஒவ்வொன்றிலும் ஆலோசிப்பது தப்பா. இதே பாலிசியில் கற்றறிந்தவர்களை உலக முழுதும் கையாண்டு வருவது தப்பா.

“விவகாரத்துக்காக ஒரு லாயர் இதில் வர இடம் கொடுத்து விட்டால் என்ன கெடுதல்கள் சம்பவித்து இந்த ஆக்டின் கருத்தை போக்கிவிடுமென்று பயப்படுகிறீர்களா.

“இந்த ஆக்டினால் கடன்காரர்கள் கடனை வாங்கி கெட்டுபோய் விடுகிறன்களா. கடனை கொடுத்தவன் கெட்டாலும் பரவாயில்லை என்பதுதானே கருத்து. இதற்கு ஒரே வழி தகுதியல்லவா. இந்த ஆக்டில் கடன் கொடுக்கிறவனுக்கும் வாங்குகிறவனுக்கு கொடுக்கப்பாது வாங்கப்பாது என்று ஒருவித பீனல் கிளாஸ் ஏற்படுத்தி விட்டால் அது எல்லா கிளாசும் எப்படி இருந்தாலும் பரவாயில்லை யல்லவா. ஆகையால் ஆதரைஸ்டி ஏஜன்டுடன் லாயர்களும் ஆஜராகலாமென என் அமெண்டி மெண்டை சேர்க்க விரும்புகிறேன்.”

Mr. P. V. KRISHNAYYA CHOUDARI:—“Sir, I am one of those who feel—I may here say that I am not expressing any contempt for my lawyer friends—that for the quick settlement of the cases coming up before the Conciliation Board, the lawyers would only be a hindrance. By their presence they will create complications and raise all sorts of legal quibbles with which the members of the board may not be familiar. Those members are not going to be judges and hear law points. They will be there to decide on equity. There is therefore no necessity for the lawyers to represent the legal aspects there. By saying this, I am

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not expressing any contempt for the lawyers as my hon. Friend, Mr. Rameswara Rao imagined. I may remind him, Sir, that this same provision is to be found in the Village Courts Act under which all claims are disposed of by the panchayats. No lawyers are permitted to appear before the panchayats. Here also, as the Debt Conciliation Board is intended for laymen, it is better that we do not allow lawyers. But if any lawyer is anxious to go there without taking any fee, he can do so as an agent. There is provision for it. As an individual member, not being a lawyer, any person can appear before the board on behalf of a party who is unable to be present owing to ill-health or other such contingencies. If lawyers are permitted to appear, they will create more complications and the Debt Conciliation Board cannot function properly. (A voice: 'Question.') If any lawyer enunciates big legal principles before the board, the members thereof who will be laymen, will get confused. We may leave them to decide questions more on considerations of equity than on strictly legal considerations. I therefore oppose this amendment and request my hon. Friend to withdraw it."

Rao Sahib V. I. MUNISWAMI PILLAI:—"Mr. President, I also rise to oppose the amendment. It is not my wish to say anything against the legal practitioners. Sir, the Bill proposes to give certain facilities to debtors and creditors to settle their transactions without having to pay legal charges. That being so, the proposed amendment seems to be out of place. Sir, we who have practical experience of the working of the panchayat boards can authoritatively say that the absence of lawyers is not felt at all and that the boards are working perfectly well at a minimum cost to the debtors and creditors. (Mr. C. Basu Dev: 'Hear, hear.') In view of this fact, I oppose this amendment and I am sure the House will agree with me."

* Mr. K. R. VENKATARAMA AYYAR:—"Sir, I support the amendment of Mr. Rameswara Rao. I do not think that at any time I regretted so much my being a member of the Bar as at the present moment. It is not from self-interest I wish to support this amendment. I do think the legal profession can well afford to be where they are even if this amendment is not passed and the clause is passed in its original terms. It is not going to add to their emoluments or earnings. (Mr. P. V. Krishnayya Choudari: 'Then why the amendment?') The point of view with regard to which I wish to base my observations is: is it fair, is it decent, is it honourable in return for all the services the rest of the world has obtained from the world of lawyers that they should stand banned like this from a service like this? (Laughter.) (A voice: 'Question.') As Mr. Muthu Chettiyar the seconder of the amendment very properly pointed out, it would appear as if this House would keep the door open for a law-tout but ban it against the lawyers. Any law tout could come in as an agent, but the lawyers could not. That is exactly what Mr. Muthu Chettiyar pointed out. I think it is very unfair and very improper that you should ban or discredit the very noble and learned profession which has ever been at the service of the rest of the world and by which service the rest of the world has profited immensely."

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* **Mr. C. BASU DEV:**—"Mr. President, I rise to oppose the amendment. In doing so, I am aware I cannot add anything to the practical arguments advanced by my hon. Friends Mr. Krishnayya Choudari and Mr. Muniswami Pillai. I would however like to join issue with that what my hon. Friend from Madura said, viz., that the lawyers do not stand to lose by being excluded from appearing before the Debt Conciliation Board. He is not correct. Our expectations are that with the passing of this Bill into law most of the suits will be diverted from the law courts to these boards. If that happens, it will certainly seriously affect the emoluments of the legal profession. My hon. Friend made a very eloquent and emotional appeal to the sense of fairness of this House and said that the world had benefited by the service of lawyers. I may remind him that that service whatever its character and extent was rewarded by substantial fees.

"Sir, the essence of this Bill is conciliation. Our experience of the lawyers is that they had stood in the way, as far as it is possible for them to do so, of the parties coming to amicable settlements. Their very nature and training will not easily permit them to gloss over the innumerable points, subtle points of fact and law. I believe that if lawyers are allowed, most of the advantages that we expect from this modest Bill, will be frustrated. I, therefore, very strongly oppose the amendment and make an appeal to this House to reject it."

* **Mr. W. K. M. LANGLEY:**—"Sir, I beg to support the amendment which has been moved. I do so more in the interests of the parties to the conciliation proposed than in the interests of the lawyers, though Mr. Rameswara Rao put the case for the lawyers very well indeed. I personally can see no particular objection to cutting out the lawyers if the real basic idea is to keep down the costs of conciliation. In that case, if you cut out lawyers, I maintain that you should only permit the parties themselves to appear in person. I cannot see any essential difference between a legal practitioner and an authorized agent. If you admit an authorized agent, it would practically be tantamount to saying that one cannot employ a lawyer, but on the other hand can employ a lawyer's tout. I do not know as much about this country as I know of my own country, but I believe that touts are always to be found around the places where the law is administered in any form. According to this provision, it would be open to one to appoint some shady character at the bar as his accredited agent but not a respectable legal practitioner. This clause as it stands is opening the way to extremely doubtful practices and to an undesirable situation. The Bill is a distinctly complicated one and therefore it would be distinctly unfair to deprive the parties of trained legal assistance.

"Another point that has to be remembered is that it is practically certain that either the debtor himself or some of the creditors appearing before the Conciliation Board will be lawyers. Why should they have an advantage which other parties to the conciliation have not? It seems to me that the clause as it stands can only work unfairly and, in very extreme cases, in a very unsatisfactory and sinister manner:

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If, however, this House persists in deciding that no lawyer shall be present, then I feel that the clause should be so amended as to provide that these authorized agents should only be allowed to represent a party when he is unable for good cause to be present in person. That is only a sort of subsequent suggestion. But nevertheless I would prefer that people are represented by those who, whether or not they deserve all the compliments which they received from the hon. Member from Madura, still more often than not by their training and their equipment, keep people out of the law rather than thrust them into it."

* Rao Bahadur Sir A. P. PATRO:—"I am glad to agree with my hon. Friend Mr. Langley in this matter. I suppose that the very vehement and eloquent attack on the legal practitioners by an hon. Member Mr. Basu Dev is due to the undue praise—he is accustomed to be vehement when he has a weak case to argue—lavished on them by the hon. Member from Madura. I believe that it is that praise which provoked the hon. Member Mr. Basu Dev to say that the poor litigants should be deprived of the valuable advice of the legal profession. I do not know whether Mr. Basu Dev has misunderstood his occupation. He ought to have been a lawyer some time back. As a politician he feels for the poor litigant and he thinks that the poor litigants should not have the services of a lawyer. There are other people who would not be in the same position as the hon. Member. The hon. Member from Madura is no doubt prone to exaggeration. On this occasion he has erred on the side of excessive advocacy which defeats its very objective. He has appeared in the House to-day after a long spell of enforced absence and wants to make his presence felt in the consideration of this Bill. (Laughter.)

4 p.m.

"Apart from the merits of the advocacy, it is unfortunate that the litigants should be deprived of the able assistance of advocates. I therefore agree with my hon. Friend Mr. Langley who put the point much more clearly than some other hon. Members. As he said, a lawyer himself may appear before the conciliation board as against another party, and argue his own (the lawyer's) case. In all such cases when a lawyer with all his training and technical knowledge will have the opportunity of putting his case, that the other party should be deprived of the assistance of another professional lawyer seems to me a great injustice to the other party. Complicated as the Bill is, there are many intricate questions of law and intricate questions of interpretation and therefore it is necessary that there should be the assistance of trained lawyers. As the hon. Member from Ganjam has pointed out, it is very necessary that we should pay very great attention to the details of procedure adopted under this Bill, though I would have been very thankful to him if he had suggested those points of procedure specifically and drawn our attention to them. Apart from that, as I said already, many difficult problems may arise in the course of working which would require the assistance of able advocates. So to deprive the parties of the assistance of able advocates would be a great injustice

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to the parties. My hon. Friend Mr. Basu Dev is a Graduate in Law and I take it he would appreciate the difficulties of the litigants and accept the proposition that the assistance of the lawyers is necessary to the litigants."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"I have heard both the arguments in favour of and against lawyers appearing for parties before the conciliation boards, and the vehemence with which the case was put on both sides makes one rather diffident of his own position. I may remind my hon. Friend Mr. K. R. Venkatarama Ayyar that I am a lawyer myself and if I want to exclude lawyers from appearing before the boards, it is not because that I have no regard for lawyers or their ability to help the litigants. Sir, the idea with which lawyers are sought to be excluded from appearing before the Board is that when the lawyer appears before the Board, the matter becomes formal and then we have to conform to the ordinary rules of procedure. It was thought that when a Board sat and had the parties before it directly, they might meet each other directly and probably things could be conducted more freely and a decision arrived at more easily. So far as the administration of this Act in the Central Provinces is concerned, experience has not shown that there has been any complaint regarding the absence of lawyers. When I visited one of the places in the Central Provinces where this Act has been working, I did not hear that there was any complaint regarding the absence of lawyers. As a matter of fact in this Bill we have introduced some improvements and even without these improvements in the Central Provinces Act they have been able to administer the Act with great success. An amending Bill is now before the Central Provinces Legislative Council with reference to two matters, one of which we have already provided for in our Bill, viz., the exclusion of the jurisdiction of civil courts, when a matter is pending before the Board. The other matter with regard to which they want to introduce an amendment is with reference to mortgage debts and they want them to go before the Board. The Hon. the Home Member who is in charge of the Bill there has stated that these are the only defects in the working of the Act there and if these two things are rectified, they will be able to work the Act more successfully. Sir, it is the only Province which has passed an Act similar to our Bill bringing into existence a Board like the one we are proposing to have and it has administered the Act successfully. Such being the case, I do not think that so far as experience goes, a case has been made out for allowing lawyers to appear before the Board. It has been pointed out that certain intricate and complicated points require the assistance of lawyers. As I said already, I am a lawyer myself and I know that certain complicated cases do require the assistance of lawyers, but when once you allow lawyers to appear, the matter becomes formal, and you will have to adopt all sorts of rules of procedure and all paraphernalia of judicial courts, and there will not be the ordinary meeting of man to man and talking the thing over. While on the one hand we will have the advantage of having the assistance of a lawyer

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in clearing intricate and complex points of law and other technicalities, on the other hand we will lose that personal touch with the parties which we think is greatly necessary in such cases. Therefore it seems to me—as I am a lawyer myself—that it is better that I leave the decision of this matter entirely in the hands of the House.”

* Mr. G. RAMESWARA RAO:—“ I was rather surprised to hear the remarks made by some hon. Members of this House. I am not referring to whisperings which had been made by some hon. Members, but only to those remarks which have been made in the course of the speeches regarding the position of Members of the Bar in the judicial administration as such. One hon. Member went to the length of saying that these lawyers are a hindrance rather than a help. I could have understood such sentiments being given expression to by an arrogant Member of the Bench, but not by a member of the public who often goes to courts and who feels that his interests are seriously affected in the absence of a lawyer. I do not think there is any hon. Member here who is or was a Member of the Bench and so I am sure, every one of the Members of this House will easily realize that every one of them will have to go to court some time or other in order to defend his case, and I challenge any one in this House whether he considers it possible for him, without the assistance of a professional lawyer to have his case conducted properly. Apart from that it has been stated by some ignorant Member of this House that lawyers are not required before the Village Magistrates’ courts or before the Panchayat courts. But the hon. Member has forgotten that in village panchayat courts only money suits come in and no questions of law arise, where any professional or technical advice is necessary. But here in this Bill we have got sections dealing with adjudication of rights over property, fraudulent alienation and such other complicated matters and to say that the assistance of lawyers is not required in the village magistrate court or the village panchayat court and that therefore the same principle should be applied in considering the scope of this Bill is something which is absolutely unintelligible. After all, if the hon. Member who has made such a statement had only known the nature and scope of this Bill, he would not have blundered in making such a statement and I pardon him for his ignorance of law. After all, Sir, as my hon. Friend, Mr. Langley said, Members of the Bar may appear as one of the parties before the Board and in such cases, the other parties, who are laymen, will be greatly handicapped without the assistance of lawyers. My hon. Friend, Sir Patro, said that some of the lawyers may have to go to the board in their personal capacity. Perhaps he meant debtor lawyers. I do concede that. I am also aware of cases where lawyers are money-lenders and they have to go to courts and personally conduct their own cases before the conciliation board. If they do appear, what is the position of an unintelligent litigant? If you deprive him of the help of a professional lawyer who would give him technical advice and guidance, as against an intelligent lawyer, who would marshall his case well before an unqualified and untechnical board where would be the ends of justice? Therefore it is but right

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that this House must consider the probable effects upon justice of allowing the lawyers to conduct their own cases without giving professional assistance to the lay litigant public, and also see how justice will be affected by allowing intelligent lawyers to put their own cases in their own way before a non-technical board. This aspect of the matter has been rightly put forward by my hon. Friend, Mr. Langley, and I do not want to pursue it further.

“ Sir, it is not a question of professional earning but it is a question where professional assistance is sought for by the litigant public. It is not a case of a man saying ‘ I cannot go without food and therefore I must be allowed to appear before the court or the board.’ I am putting the case from the standpoint of the service which the Members of the Bar are rendering when their work and assistance is sought for by the litigant public. It is from that standpoint that I say that this House ought not to ignore and deprive the litigant public of the possible assistance which they would otherwise get at the hands of experienced lawyers. It is quite wrong to say that lawyers are a source of hindrance. That only shows the ignorance of the gentleman who has made such a statement. What the lawyers do is they simply lay bare the cards on the table and want the other side to meet the case. That is a source of great help rather than a hindrance to the parties and to the courts of administration of justice. Therefore, I submit that the lawyer is very essential for the conduct of litigation before the conciliation board where questions of high technical importance ought to come up. I am not very much concerned about the lawyer earning a few rupees or more. After all the party will have the discretion to get a man at the best rates or at the cheapest rates. I am not putting the case from that standpoint. I only say ‘ do not deprive the man who wants help, all the possible help that a lawyer can give.’ That is the appeal I make to this Honourable House and I leave it there.”

* The Hon. Sir K. V. REDDI NAYUDU:—“ Sir, I see that the feeling in the House is strong on both sides and therefore in order to avoid certain difficulties that have been brought to the notice of the House, I may suggest that the existing clause might be amended, so that legal practitioners as well as agents might be allowed to appear, at the same time providing that the permission of the board would be necessary in either case in order to prevent the appearance of touts. I therefore move that the following clause be substituted for the existing clause 20:— 4-15 p.m.

‘ 20. *In any proceedings before a board any party may appear in person or with the permission of the board, by a legal practitioner or an agent authorized in writing.*’ ”

The amendment was duly seconded.

Mr. K. P. RAMAN MENON:—“ I want to know if the idea is to obtain the permission of the board even in the case of legal practitioners.”

The Hon. Sir K. V. REDDI NAYUDU:—“ Yes, in both cases.”

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Mr. P. V. KRISHNAYYA CHOUDARI:—"Why not put the legal practitioner and the agent separately?"

Mr. Rameswara Rao's amendment was by leave withdrawn.

The Hon. Sir K. V. REDDI NAYUDU's amendment was put and carried.

Mr. M. S. SRESHTA:—"May I know whether any discussion is permitted upon this clause?"

* The Hon. the PRESIDENT:—"This is the fruit of a very long discussion in the House."

Clause 20 as amended was put and carried.

Clause 21.

* Mr. M. DEVADASAN:—"Sir, I beg to move the following amendment:—

'For clause 21, substitute the following:—

"The Board shall not entertain any application under section 4 either by a creditor or debtor when any suit or proceeding involving the interest of either party is pending before a civil court unless both parties agree to submit themselves to the jurisdiction of the Board after institution of a suit in the said Court."

Sir, clause 21 as found in the Bill seeks to empower a board to stay proceedings pending before a civil court. Though similar powers are inherent in civil courts they are rarely used. Even the High Court is wary in the exercise of this power. If we give conciliation boards such a power, then it is likely to be abused. When a suit is filed before a civil court, the defendant might resort to a conciliation board and ask for the intervention of the board to stay the proceedings before the court. A plaintiff who has gone to the civil court and incurred expenditure by payment of court-fees and pleader's fees should not be lightly thwarted in his way by the intervention of a conciliation board. If a provision like this is allowed to stand in the Bill, people might not be willing to go before civil courts, for they would be afraid that they might be thwarted by the defendant going to debt conciliation board the next day and invoking their intervention to stay the proceedings before the civil court. Moreover if a debtor finds that his creditor has not agreed to the terms suggested by him, he may go before a conciliation board and ask for their intervention and stop the proceedings before the civil court. I do not know what the Hon. the Law Member thinks of this amendment. Clause 16 of the Bill as it stands says that no civil court shall entertain any suit in respect of any matter pending before a board or the validity of any procedure or the legality of any agreement made under this Act and so on. By such a clause civil courts are prevented from taking cognizance of any matter pending before a board. When civil courts are thus prevented, why should not the boards be similarly prevented from taking cognizance of matters already pending before civil courts? I submit there must be some such

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safeguard against abuse of the powers vested in these boards. I do not mean to say that the boards as are likely to be constituted under the Bill will misuse the powers, but there is every chance of a creditor who has gone to a civil court being embarrassed by a debtor. My amendment seeks to remove the difficulty by providing that the proceedings before a civil court should not be stayed unless both parties agree to submit themselves to the jurisdiction of the board after institution of a suit in a civil court. I do not want the whole clause to be deleted. I have suggested a compromise and it cannot be said that if my amendment is accepted the object of the Bill will be defeated. My object is that the party whose case is pending before a civil court should have the opportunity of consenting or not consenting to have the case withdrawn so that it might be decided by a debt conciliation board."

The amendment was duly seconded.

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"Sir, I am sorry I cannot accept the amendment. It seeks to set at naught the very basis of the Bill. Even under the Insolvency Act, the moment an insolvency petition is filed any suit that is filed has to be tried along with the insolvency petition and not separately. Such being the case, I do not know what my hon. Friend means by moving an amendment like this. We have only introduced a provision which under the decision of the Madras High Court has come to be the practice in all the courts in this Province, namely, that as soon as an insolvency petition is filed no suit can be tried separately.

"Then again, Sir, there is no need whatever for the amendment proposed by Mr. Devadasan, because under clause 16, civil courts are already prevented from taking cognizance of cases pending before conciliation boards. All that the hon. Member proposes comes to this, that clause 21 should be deleted. If his idea is that the moment that a suit is filed in a civil court the debtor cannot have the benefit of this Bill, it only means that the benefit of this Bill whatever it may be, will be denied to a very large number of people. As a matter of fact, the object of this Bill is to save those debtors against whom suits have been filed, against whom executions are pending, and those who owe large sums of money which they are not in a position to repay. Such being the case, to introduce a provision like this will only mean that the benefit of this Bill will be denied to the very people for whose benefit it is intended. I have to oppose this amendment and I am sure the House will agree with me that if this amendment is accepted there will be no use for the Bill afterwards."

* Mr. K. R. VENKATARAMA AYYAR:—"Sir, if this amendment is accepted, it will practically give a death blow to this Bill. This amendment, if passed, will make it impossible to put the Act into operation, in any case in which there is a suit against the debtor; whereas the basic object of this legislation is to give relief to debtors whether there are already proceedings pending for recovery of debts or whether proceedings are actually instituted later. I think that, inasmuch as it has already been enacted that under Section 16 no fresh suits for recovery

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of debts are to be entertained by the civil court when proceedings are initiated under this Act, it will only be an analogous provision falling in line with it, if we enact that pending proceedings shall also stand suspended. Having committed ourselves to the principle of section 16, we are only making a particular application of it when we say that just as you bar fresh proceedings, you must suspend proceedings already started in the civil court. Otherwise the provisions of this Act cannot really be put into operation. I think the amendment of Mr. Devadasan is destruction of the policy underlying this legislation."

Mr. M. DEVADASAN:—"I do not press the amendment."

The amendment was, by leave, withdrawn.

Clauses 21 and 22 were put and carried.

Clause 23.

Mr. G. RAMESWARA RAO:—"Sir, when I wanted to move an amendment to sub-clause (3) of clause 15, I was advised to move an amendment to clause 23. I would explain this way. The scope of sub-clause (3) of clause 15 covers only two cases of debts. The first is the case of a debt other than the debt incurred subsequent to such agreement. The second kind of debt is that incurred after the date of the agreement. These are the two classes of debts, first, the debt incurred subsequent to the agreement and the second the debt incurred after the date of the agreement. The first class covers the debt for which certificate has been granted under sub-section (1). The second includes the case in which no certificate is required. Therefore the two classes of debts covered by sub-clause (3) of clause 15 are entirely different from the debt referred to in clause 23. The debt referred to in clause 23 is a debt which is the subject-matter of any proceedings under this Act. Therefore the House will clearly see that debts of three classes are contemplated when we take sub-clause (3) of clause 15 along with clause 23. These are the three classes of debts referred to. In the case of all these three classes of debts, there is room for recovering them through civil courts. Therefore I want to put in a comprehensive provision covering the cases of all these three classes of debts for the purpose of this legislation.

To achieve this object, I move the following amendment:—

'Renumber clause 23 as sub-clause (1) of clause 23 and insert the following as sub-clause (2) to clause 23:—

"(2) The period during which proceedings under this Act have been pending including the actual period fixed in the agreement for payment of all the debts shall be excluded from computation under section 48 of the Code of Civil Procedure or the Limitation Act in all proceedings taken to recover debts in civil courts."

I use the word 'proceedings' advertently; thereby I include suits as well as execution proceedings, whatever their nature may be. By this comprehensive amendment I seek to introduce exemption from the

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running of limitation for debts recoverable in the usual course, if proceedings under this Bill are pending before the conciliation board."

Mr. K. R. VENKATARAMA AYYAR:—"I second it."

The amendment was put and carried.

Rao Bahadur P. C. MUTHU CHETTIYAR (speaking in Tamil):—"Sir, I beg to move the following amendment standing in my name:—

'Add the following proviso to clause 23 (1):—

"Provided that three months' time be given from the date of the disposal of the application by the Board."

"லிமிடேஷன் இந்த போர்டு ஆர்டர் தேதிவரையுள்ள காலத்தை கமித்து என்று கண்டிருப்பதில்: கூட 'ஆர்டர் தேதி முதல் அதிகம் 3 மாத டயம்' யென் பதை சேர்க்கவேண்டும். இதில் காபி வாங்கும் டயம் தனியாய் கழிக்கவேண்டுமென என் அமெண்டுமெண்டு.

"ஏனென்றால் பார்டிகளுக்கு ஆர்டர் தேதிமுதல் என்றால் ஏற்கனவே தாக்கல் செய்யும்போது வாய்தா ஒரு தினம் இரண்டு தினமிருக்கும்போதும் தாக்கல் செய்திருந்தால் ஆர்டர் தேதிவரையுள்ள காலத்தை கமித்தால் போர்டாருல் தீர்மானம் நடந்தது ஒரு ஊறுயிருக்கலாம். வாபஸ் வாங்கி சரியான ஜூரிஸ்டிக்ஷன் கோர்ட்டுக்கு தாக்கல்செய்ய பார்டிக்கு உடனே சமாசாரம் எப்படி தெரிய முடியும் தெரிந்தாலும் அந்த சந்தர்ப்பம் அந்த பார்டியின் சந்தர்ப்பம் எப்படியோ சௌகரியம் எப்படியோ. பார்டியோ அல்லது பார்டிக்கு ஒரு கார்டியன் புதிதாக வரவேண்டியதோ அல்லது சிலவுக்கு பணம் வேண்டியது சேகரிக்கவோ இந்த ஆர்டரின்பேரில் என்ன செய்யலாமென்பதை தகுந்த லாயர் சமயம்பார்த்து அபிப்பிராயம் கேட்டு தாக்கல் செய்யவோ இவைகளுக்கு எல்லாம் போதுமான டயம் வேண்டாமா!

"இதற்குமுன் அனுஷ்டானத்திலுள்ள எல்லா ஆக்டுகளிலும் நடவடிக்கைகளிலும் ஒரு மாதம் 3 மாதங்கள் ஏற்பட்டிருக்க நகல் டயங்கள் பிரத்தியேகமாயிருக்கவேண்டியதும் ஏற்பட்டிருக்க ரொம்ப நியாயமில்லாது இம்மாதிரி காலத்தை கொடாது செய்வதானது உலக இயற்கையும் ஜனங்களின் தன்மையும் அறியாததாகும்."

* Mr. K. A. NACHIYAPPA GOUNDER:—"Sir, I beg to second the proposition moved by my hon. Friend, Mr. Muthu Chettiyar. In his amendment he wants that some more time should be provided than the time taken up by the Board which is proposed to be excluded when calculating the time for limitation. For instance in cases where the matters were brought before the Board only at the nick of time on the very eve of limitation period and where the parties are not able to come to some settlement, it is but natural that the creditor will have to go to a civil court; in such a case he must be given sufficient time to file his suit in a civil court; if necessary provision is not made for contingencies of this sort, the creditor will straightaway run to the civil court instead of coming to the conciliation board. So, as has been pointed out by Mr. Muthu Chettiyar, it is absolutely necessary that we should provide some time for contingencies of this nature in order to popularize the conciliation board so that creditors too may approach it without any hesitation. Hence I hope that this amendment will be accepted by the House."

* Mr. K. R. VENKATARAMA AYYAR:—"Sir, the particular case which appears to be in the mind of the mover as well as the seconder of the amendment is the case where the proceedings under this Act are

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deferred, so to say, till the last stage of the period available under the ordinary law to file suits against the debtor. If the short time that generally exists for filing suits in the court is taken up by the proceedings of the Board, and if the Board's proceedings are not satisfactory it is impossible for the creditor to file his suit under the general law of limitation in any civil court. The net result will be the creditor will be put in a position which it is not the intention of the framers of this Bill or of any legislature to put him in. Redress is necessary against contingencies like that. One mode of allowing redress would be by excluding not only the period of proceedings under this Act before the Board but also the period taken up in obtaining certified copies of these proceedings. I hope that under the rules to be passed under this Act, provision will be made for applications for granting certified copies and for grant of such copies. One mode of allowing redress would be to amend the existing section 23 by introducing the words, 'the time during which such proceedings continue, as well as the time required for obtaining certified copies thereof shall be excluded.' Suppose we put it like that; the question is whether the necessary provision would have been made. Provision should be made for the deduction of the time taken up by the proceedings as well as for the deduction of the time taken up for obtaining certified copies of the proceedings; even this provision may not be adequate. You may also allow a compensation period for the period lost before the Board in infructuous proceedings. That raises a question of equity and justice between the creditor and the debtor. Three months' time is the period proposed by the mover of the amendment. It may be three months or it may be one month or nothing. Some period would appear to be called for in the interests of justice, in order to prevent justice being shut out by mere lapse of time. I would suggest that after the word 'continued' the following words be inserted: 'and the time required for obtaining certified copies of the proceedings as also a period of 30 days more.' I think some such provision will meet the case. If this is agreed to and if the Hon. the Law Member also would consider it, it can be put through as an agreed proposition. I think it can be done."

Mr. P. V. KRISHNAYYA CHOUDARI:—"I second it."

4.45
p.m.

Sriman M. G. PATNAIK Mahasayo:—"Mr. President, the hon. Member really wants to extend the time available to the creditor. I do not see why the time should be extended. Where is the compensation? If one day is taken up for proceedings before the board, then you will have six months plus one day. This proposition seeks to affect the period of limitation, and no creditor ought to be given this privilege. I therefore oppose the amendment."

* Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—"Sir, in the amendment suggested by Mr. Venkatarama Ayyar, two periods are referred to, one the time for taking copies and the other a period of thirty days in addition. The difficulty mentioned by the mover is that after the order is passed, there should be some time allowed for filing the suit. If we are going to have the time taken for taking copies

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excluded, that will furnish the time for the other purpose also. So, if we add here something to the effect, that not only the time taken for the proceedings but also the time taken for taking copies should be excluded I think that will serve the purpose. I therefore move—

“In the last line of clause 23, sub-clause (1), after the word “continued” insert the following words:—

“as well as the time taken for the obtaining of copies of the order of the board”.”

Mr. P. V. KRISHNAYYA CHODARI:—“I second it.”

* The Hon. Sir K. V. REDDI NAYUDU:—“Mr. President, Sir, I agree with the hon. Member in charge of the Bill in thinking that there is no justification for allowing thirty days. That will be contrary to the existing law. Even in matters in which such time as this is excluded under the various statutes, it is only the exact time occupied by the proceedings and not any extra time. There is thus no justification for the thirty days’ time, sought to be introduced here.

“As regards the time required for obtaining copies, I think the usual rules in the Limitation Act ought to apply here also. If any delay is made in the application for copies, the time of such delay will go against the applicant. So, section 5, I believe, of the Limitation Act, can also apply here and the time taken for the obtaining of copies may reasonably be excluded.”

* The Hon. the PRESIDENT:—“I shall put Mr. P. C. Muthu Chettiyar’s amendment to vote.”

Rao Bahadur P. C. MUTHU CHETTIYAR withdrew his amendment by leave of the House.

* The Hon. the PRESIDENT:—“I shall now put Mr. Ramalingam Chettiyar’s amendment to the vote of the House.”

“The question is:

“In the last line of clause 23, sub-clause (1), after the word “continued,” insert the following:—

“as well as the time taken for the obtaining of copies of the order of the board”.”

The Hon. Sir CHARLES SOUTER:—“I suggest, Mr. President, that the word ‘certified’ be put in there.”

* The Hon. the PRESIDENT:—“The amendment is:

“In the last line of clause 23, sub-clause (1), after the word “continued” insert the following words:—

“as well as the time taken for the obtaining of certified copies of the order of the board”.”

The amendment was put and carried.

The amendment of Mr. K. R. Venkatarama Ayyar was by leave withdrawn.

Clause 23 as amended, and clause 24 were put and carried.

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Clause 25.

Rao Bahadur P. C. MUTHU CHETTIYAR (in Tamil) moved:

"In clause 25, omit sub-clauses (a) and (c) and in sub-clause (f), add at the end 'by the local Government'."

"ரூல்ஸ் லோகல் கவர்ன்மெண்டு செய்ய ஏற்பட்டிருப்பதால்

(a) கோரத்துக்கு ரெகுலேட் செய்ய ஏற்பட்டிருப்பதை எடுத்துவிட வேண்டியது நியாயமாயிருக்கிறது. என்பது என் அமெண்ட்மெண்டு.

(c) ஏற்படுகிற சிலவு சார்ஜை போர்டு வசூலிக்க லோகல் கவர்ன்மெண்டு ரூல் ஏற்படுத்துவதை எடுத்துவிட அமெண்ட்மெண்டு.

"இம்மாட்ரி பெர்துவாக கவர்ன்மெண்டுக்கு இருக்கிற அதிகாரத்தினால் ஏராளமான சிலவுக்கும் சிலவை ஏற்படுத்துவதற்கும் இடமாகிறது. ஒன்று தெரிவிக்கிறேன் :—

"சமீபத்தில் எஸ்டேட் லாண்டு ஆக்ட் திருத்தி அமைத்த காலத்தில் அதற்கு 117-வது பிரிவின்படி ரெவின்யூ பாக்கிக்கு எடுத்துக்கு வரும் முன் நடவடிக்கையிலிருந்து ஸ்டாம்பு சிலவுகளும் இன்னும் பார்க்கிகள் தெரிந்துகொள்ளவேண்டிய பலவிதமுறைகளையும் ஏற்படுத்தினதோடு கெஜ்டு நோட்டிபிகேஷனும் இருக்க வேண்டுமென்றும் ஆனால் அது ஒரு சிலவையும் சிரமத்தையும் பொருக்க கூடாத மாதிரிபோல அப்போதிருந்த மினிஸ்டர் ஏற்படுத்தினார். ஆனால் எல்லா நடவடிக்கையும் சர்க்கார் மூலமாகவே நடத்துவதாயினும் சாதாரணமாய் சர்க்கார் Rent Recovery ஆக்டின் பாக்கிக்கு கெஜ்டு நோட்டீஸ் போடுவதுபோல் என்று அறிந்திருந்த வாக்கியத்துக்கு ஒவ்வொரு பட்டா பாக்கிக்கும் அந்த துகை எவ்வளவு சிறிய ரூ. 0-10-0 பாக்கி இருந்தபோதிலும் அதற்கு கிராமங்கள் சற்றேறக்குறைய சுமார் ரூ. 4 வரையுள்ள ஸ்டாம்புகள் சிலவானபோதிலும் ஒவ்வொரு கேஸ் பாக்கிக்கும் கெஜ்டு நோட்டிபிகேஷனுக்கு ரூ. 26-4-0 கவர்ன்மெண்டு விதித்து அமலுக்கு வந்தது. இது நியாயமா? ஒவ்வொரு ஜமின்தாரியாலும் 500, 1,000, கேசுகள் பாக்கி ஏற்பட்டால் ஜப்தி செய்வதற்குரிய ஸ்டாம்புகளே மொத்த துகையாக கொடுத்து ஸ்டாம்பு வாங்கி ஒட்டி அனுப்பமுடியாத அநேக எஸ்டேட் களில் சங்கடங்களை அடைகிறார்கள்.

"இப்படியிருக்க ஒருபக்கத்தில் கெஜ்டு நோட்டீஸ் பல கேசுகளை அடித்து ஆனுப் புவதற்கு 100, 1,000, 10,000, கணக்கான பெருந்தொகைகளை அச்சு சார்ஜாக மொத்தமாக கட்டும்படி ஏற்பட்டுவிட்டது. அதனால் முடியாமல் கரெஸ்பான்டன்டென்ஸ்களிலும் இருந்து வருகிறது.

"ஆகையால் அந்த (c) கிளாசை எடுத்துவிடவேணும்."

Mr. K. A. NACHIYAPPA GOUNDER:—"I second it."

The amendment was put and lost.

Clause 25 was put and carried.

Clause 26.

Clause 26 was put and carried.

Clause 2.

* The Hon. the PRESIDENT:—"With regard to clause 2, we have not disposed of amendments Nos. 5, 6, 6-A and 9 of the list circulated, as we wanted to dispose of amendment No. 33 before these were taken up. Since amendment No. 33 has been disposed of, Nos. 6 and 6-A go out; similarly, No. 9. Mr. Thangal is not moving No. 5.

I shall now put clause 2, as amended, to the vote of the House."

Clause 2, as amended, was put and carried.

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Clause 7-A.

Clause 7-A was put and carried.

Preamble.

The preamble was put and carried.

Diwan Bahadur T. A. RAMALINGAM CHETTIYAR:—" I propose, Sir, that the further consideration of this Bill be adjourned to the next non-official day as the first item."

Mr. P. V. KRISHNAYYA CHOUDARI:—" I second it."

* The Hon. Sir K. V. REDDI NAYUDU:—" We may certainly have it for the next non-official day, but this may not necessarily be the first item, because there may be some technical business to be transacted."

* The Hon. the PRESIDENT:—" Provided no formal motions intervene, we can go on with this Bill first."

The House then adjourned to meet again at 11 a.m. the next day.

D. K. V. RAGHAVA VARMA,
Acting Secretary to the Legislative Council.

